Home Office

Immigration Removals, Enforcement & Detention
General Instructions

Initial consideration and assessment of liability to administrative removal

Version 4.0

Contents

About this guidance

This guidance tells Immigration Enforcement Immigration Officers (IOs) and Immigration Enforcement caseworkers who may be liable to administrative removal from the UK under section 10 of the Immigration and Asylum Act 1999 (the 1999 Act) and the steps to take to determine whether a person is liable to removal.

The guidance refers to a two-stage process. The first stage, stage A, focuses on the steps to be taken to decide whether a person is liable to removal and whether it is proportionate to commence removal action.

The second stage, stage B, is about the considerations which need to be given before you proceed with enforced removal action. It provides a focus on identifying barriers to removal.

This guidance forms part of a suite of removals guidance. See also:

- Enforced removal: notice periods
- Arranging removal
- Judicial reviews, injunctions and applications to the European Court of Human Rights: in relation to enforcement of immigration removal and deportation

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 Enforcement Policy.

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 also email the Guidance Rules and Forms team.

Publication

Below is information on when this version of the guidance was published:

- version **4.0**
- published for Home Office staff on **20 February 2024**

Changes from last version of this guidance

Updated to correct a minor error on page 31 so it now refers to ‘destination country’ rather than ‘home country’.

Related content
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Administrative removal: terms and definitions

This guidance tells Immigration Enforcement Immigration Officers (IOs) and Immigration Enforcement caseworkers about the identification of those liable to administrative removal from the UK under section 10 of the Immigration and Asylum Act 1999 (the 1999 Act) and consideration of:

- whether it is appropriate to serve the notice of liability to remove

Administrative return consideration means, in the context of this guidance, the process of considering whether an individual is liable to administrative removal and, having identified and notified an individual they are liable, whether it is right to actively pursue and enforce their return.

Administrative removal consideration may apply to people who:

- require permission to enter or stay in the UK but do not have it (such as overstayers, illegal entrants)
- are found to be breaching a restriction or condition of their visa to enter or remain in the UK
- seek or obtain permission to stay by deception
- are family members of a person being removed

See also: EU, other EEA, Swiss citizens, and their family members: consideration of administrative removal action.

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Stage A: Deciding liability to removal and whether it is proportionate to commence action

When you receive a referral to consider a person's case and you need to determine whether that person is liable to removal, you must assess all of the information available to you in the first instance. Whilst each case must be considered on its individual merits, the following non-exhaustive list provides you with a guideline as to the information you should review and consider:

- the casework system in its entirety to read notes on any previous encounters and interviews and to check the person's status
- linked cases for any partner's or dependants
- risk assessments that may have been completed by ICE teams, UKVI, or Immigration Prison teams
- special conditions and person alerts
- previous appeal, Judicial Review and application outcomes
- family welfare and family separations assessments
- referrals to the National Referral Mechanism

After you have reviewed all of the information available to you, you must determine whether you need to request any further information and evidence from the person, or from internal and external stakeholders, to allow you to make a fully informed assessment on the persons liability to removal.

Before you move to step 3, you must confirm, as noted in the step 2: identify liability to removal, that the person is legally liable to removal, that is, that an immigration breach or offence has been committed and there are no outstanding appeals, applications, or further submissions. You must also determine whether the destination for removal is viable, and whether there is an available travel document. If there is no travel document available, you must consider whether it will be possible to obtain one.

The step 3: assess liability to removal section provides you with an outline of the factors you will need to consider when making your assessment of the person's liability to removal. You should review these factors and determine what further information or evidence you will need, if any, to allow you to move to this next stage of the process in assessing the person's liability to removal.

The final step in stage A of the process, is step 4: propose next action. By following the steps set out in the stage A process, you must reach a decision on the person's liability to removal and the case outcome.

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Step 1: Assess and gather available information

This page tells you about the information you need to assess in the first instance, when you receive a case and need to undertake an assessment as to whether the person is liable for removal. It is not an exhaustive list, and each case must be considered on its individual merits.

The term 'casework system' is used throughout and means relevant Home Office data systems, including Atlas, and where relevant Warehouse, as well as Home Office digital files and physical files where they exist.

The casework system

When you receive a person's case you must review Home Office data systems, including Atlas and where relevant Warehouse, and any digital and paper files, to determine what information is already available to you.

You must look for any notes regarding previous encounters, or interviews which have been conducted, including those by police and Immigration Officers (IO). These may provide you with information about the person's immigration history, including factors such as length of residence, health and family ties. They may also provide information about a person's criminality.

You must also check the casework systems for any evidence regarding a person's residency. For example, you will be able to ascertain whether a European Union Settlement Scheme (EUSS) application has been made. Any linked cases to partner's or dependants must also be reviewed for information.

In addition, you must also check that there are no outstanding submissions, either which appear or have not been raised on the system as a human rights barrier to removal. See also: Identifying barriers to removal.

The special conditions and person alerts are important to check, as these may provide you with information with regards to any risks the person poses to the public or themselves, any recorded health issues, and factors including pregnancy.

For further information regarding these various checks, see: Control Points and Data Checks guidance.

Previous appeal, Judicial Review and application outcomes

You will find information regarding any previous appeal, Judicial Review or application outcomes on the casework systems. Previous applications may include but are not limited to the following: applications for leave, asylum, to the Windrush scheme or EUSS.

If you are unable to locate the outcome but note that a previous appeal, Judicial Review or application was lodged, you must consider whether you need any further information from the team who had responsibility for handling any of these or updating the outcome.

For further information on Appeals and Judicial Review, see: Appeals and Litigation.

For further information on the types of application which can be made, you may wish to consider the following non-exhaustive list of guidance in the areas of:

- Asylum
- Nationality for information about applications for citizenship
- European, EEA and Swiss nationals for information on the EU Settlement Scheme and other rights of residence
- Windrush for further information on the Windrush scheme

You must note that there are various routes under which a person might have applied for leave to enter or remain, also referred to as permission to enter or stay, in the UK. A person can be granted permission both within and outside of the Immigration rules and many grants of permission are made via the UK Visas and Immigration (UKVI) and charged routes. The reasons for a decision should be recorded on Atlas. If further information concerning an outcome on an application for leave is still required, you should contact the original decision maker as noted on Atlas.

Family welfare and family separation assessments

When considering the information available to you, you will need to review the casework systems for any previous family welfare, or family separation assessments which may have been conducted.

You should also consider any information received from relevant external safeguarding partner agencies, including Social Services, Police, Family Courts, the Probation Service and those under Multi-Agency Public Protection Arrangements (MAPPA).

For further information, see:

- Family returns process
- Family separations

Referrals to the National Referral Mechanism (NRM)

You need to consider whether there has been a referral to the NRM, and if there has, whether the referral is still being considered or whether it has been concluded. You may need to contact the team considering the referral for further information if it is not available on the casework systems.

In some circumstances, it may be appropriate for you to refer the person to the NRM as a potential victim of modern slavery.

For further information, see:

- Identifying Adults at Risk
- Victims of Modern Slavery

Making a request for further information and evidence

If, having reviewed the casework systems, you notice any gaps in the person's immigration history, or you see information recorded which is incomplete or insufficient to allow you to make a fully informed decision as to whether the person is liable for removal, you must seek or request further information or evidence. You should review step 3: assess liability to removal to determine the various factors you need to take account of in making your decision and you should make requests for information and evidence as appropriate.

For example, if you see a note on the casework system to suggest that the person has a health issue, whether that is physical or mental, but you do not have sufficient information to allow you to determine whether this affects the person's liability to removal, you must request further information. This could include, with the person's consent, making a referral to healthcare in a custodial setting or in a detention centre.

The method you choose to obtain information or evidence will depend on whether the person is in a custodial setting, immigration detention or in the community.

You may decide to contact the person directly, or via an Immigration or Prison Officer, a member of staff in a detention centre, or via the person's legal representative, if they have one.

You must also consider whether you need information from external stakeholders, such as the Probation Service, or Children's Services.

For example, if the person has been convicted of a criminal offence, you should contact the person's Probation Officer to request a copy of any risk assessments which have been conducted. If the person is known to the Probation Service, you may also be able to obtain a pre-sentence report or other useful documentation which may give you information about their personal circumstances, such as their length of residence and any family ties.

If there are safeguarding concerns for any children linked to the person's case, you may be able to obtain some information from the Probation Service, but you must also make contact with the person's local Children's Services to either make a referral as necessary, or for further information if any children linked to the person's case may be known to them.

If you note any safeguarding risks, you must raise these as appropriate, on the casework system and with the relevant authority.

See:

- Identifying people at risk
- Suicide and self-harm
- Referral to health and social service agencies
- Local authority child referrals and referral form

Dependent on the information received, and the individual's immigration history, it may be necessary to consider any submissions as a fresh claim or further submissions.

Seek advice from other business areas

This page tells Immigration Enforcement Officers (IOs) and caseworkers about circumstances where they may need to seek advice from other business areas, and if necessary, make a referral.

Armed forces

See also Armed forces guidance.

No negative decisions or enforcement action, including a decision to detain, must be taken on cases involving former HM Forces personnel without explicit approval at Senior Civil Service (SCS) level.

The guidance HM Forces: persons seeking settlement on discharge clarifies how to consider settlement applications from former members of HM Forces where the only reason for refusal under the Immigration Rules is that the applicant has overstayed for more than 28 days and/or was discharged more than 2 years ago.

All cases, where a refusal is being considered other than for reasons of criminality, and where the SCS concurs that a refusal is the correct application of the Immigration Rules, must then be referred to ministers.

Cases referred to SCS must include the applicant's:

- full immigration history
- armed forces details including date of enlistment and discharge (if due to medical discharge details of current health and prognosis should also be recorded)
- family details, including whether their partner is also a serving member of HM Forces
- proposed course of action, including any proposal to detain or serve the notice of liability to remove

Given the timescales involved, the duty SCS will be telephoned by enforcement staff to gain initial authorisation for detention and service of a notice of liability to remove or related notice. See: enforced removals: notice periods

It is accepted that detention is likely to be authorised while further checks into the military service are verified, provided that there are no other reasons to suggest that detention would not be appropriate or lawful.

A key consideration is whether the decision that has been taken is in line with the Armed Forces Covenant which states that there should be no disadvantage as a result of service.

You must balance this against the need to ensure that the Immigration Rules, including those which relate to Foreign and Commonwealth members of HM Forces in Appendix Armed Forces (the Armed Forces Rules), are not undermined by any areas of the business inadvertently making decisions that go against the purpose of the Immigration Rules. You must consider the service record as a whole, including length of service, operational tours and reasons given for not regularising their stay sooner. This also applies to minor criminality, the length of service will not necessarily outweigh minor criminal activity but may be taken into consideration.

In general, the Armed Forces Rules and supporting policy have been designed to take account of the circumstances of the armed forces. Therefore, proper application of the Immigration Rules must not result in unjustifiable decisions. The Armed Forces Rules make it clear that to qualify for settlement a person must not be an immigration offender, there are specific rules for dealing with minor criminality that involve the possible granting of limited leave rather than settlement. In addition, the deportation threshold is inviolable. Where cases meet the foreign national offender returns command (FNO RC) deportation criteria, neither settlement nor limited leave may be granted without FNO RC agreement.

The referral must outline whether you consider the person has been fairly treated and whether processes for informing them of immigration issues post-discharge have been correctly followed. For example:

- were they notified when their exempt status was initially confirmed that they would cease to be exempt from control on discharge?
- did the Home Office grant 28 days leave to remain on discharge?
- have delays or other actions by the Home Office contributed to their current immigration status?

It is important to ensure the decision is properly justified. If you can demonstrate that a person has knowingly ignored the Immigration Rules, a refusal is likely to be defensible.

The Immigration Rules are rightly robust on criminality and overstaying. Cases involving ex-service personnel may therefore attract media attention even when the correct action and decision has been taken. This does not mean however that a person’s service must override any negative behaviour or be a barrier to detention or removal if deemed appropriate.
If, having considered the points above, the SCS concurs with the decision to refuse, you must refer the case onwards to ministers making the proposed course of action clear.

If you have any queries about the Armed Forces Rules and policy email Armed Forces Policy, including ‘SCS referral query’ in the subject box.

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Interventions and Sanctions Directorate

The Interventions and Sanctions Directorate (ISD) was set up with the aim of removing incentives for people to stay illegally in the UK, increasing compliance with the Immigration Rules and to encourage those who are here unlawfully to regularise their status or to leave.

You may identify information that may be of assistance to ISD as part of your consideration. Refer the case to ISD, see: Refer case to Interventions and Sanctions Directorate. If you have any queries email Interventions and Sanctions Directorate referrals.

Intelligence referral

The Intelligence Hubs in Sheffield, Liverpool and Croydon process intelligence referred by members of the public and by casework staff. Caseworkers are the experts in abuse within their areas and intelligence teams rely on their knowledge to be able to provide evidence which can be acted upon. For information about when and what to refer to intelligence, see referrals to Intelligence.

Removability: destination for removal

Following your review and consideration of all of the information available on the person’s case, you need to determine whether the destination for removal is viable.

In summary, that means that you need to review the country policy and information page, and if necessary, contact the country policy information team for further information on the removal destination to ascertain whether removals are being effected to that destination. You should also consider any operational instructions which might have been issued regarding removals to the specified removal destination.

It may be appropriate to contact Returns Logistics Operations for additional information. See also: Returns Logistics for an operations contact list, should you need to contact a specific team.

Travel documents

You may identify that a person requires a travel document in order to be removed from the UK. It is important to establish what documents are required to remove a person to their destination, what is held either by the person or the Home Office and whether it is valid for return.

You must check whether there is a valid travel document held. If a valid document is not available and country information establishes that the person cannot be removed on a United Kingdom Letter (UKL), consider if it is appropriate to obtain an emergency travel document (ETD).

Information about what documents are accepted for return to each country and timescales for obtaining ETDs can be found in the Country returns guide.

See also: Removals documentation.

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Step 2: Identify liability to removal

This page outlines in detail the relevant characteristics you must review in each case to determine whether a person is legally liable to removal.

When you are assessing a person's legal liability to removal, you will need to consider the following factors:

- whether an immigration breach has occurred
- any outstanding appeals
- any outstanding applications
- any further submissions

See: Stage B: Consideration of active enforced removal for further information about potential barriers to removal.

See within this section:

- Illegal entry
- Deception
- Overstayers
- Workers in breach

The following categories of liability to removal are in relation to administrative offences. Immigration offences may make a person liable for criminal prosecution, however, our preferred option is to deal with such cases through administrative removal action, rather than prosecution, except where there are aggravating circumstances for consideration.

For further information on criminal offences see: Dealing with potential criminality guidance.

Liability to removal: illegal entry

An individual that requires leave to enter but does not have it is liable to be administratively removed under s10 Immigration and Asylum Act 1999.

A person is an illegal entrant and liable to be removed under s10 Immigration and Asylum Act 1999 if they entered the UK unlawfully without leave, whether knowingly or not. Entry without leave includes:

- absconding from port of entry bail
- clandestine entry
- unwitting evasion of the control

Illegal entry as a result of evading the immigration control

The Immigration Act 1971 states in section 3(1) and 3(1)a that ‘except as otherwise provided by or under this Act, where a person is not a British citizen he shall not enter the United Kingdom unless given leave to do so’. The person is therefore liable to be administratively removed if he does not have leave to enter.

Types of evasion

Absconders from port of entry bail

See: Non-compliance and absconder guidance.

Clandestine entry

See:

- Irregular or unlawful entry and arrival
- Clandestine entrants – maritime, juxtaposed and other locations

Unwitting evasion of the control

Some people may unwittingly enter without leave, such as those who:

- present a passport to the Border Force officer on arrival who fails to endorse it when an endorsement is required for leave to enter to be granted
- unintentionally by-pass the immigration control
- enter via the Common Travel Area (CTA); for instance, entering via the CTA without a visa

Others, despite no false representations being made, may be admitted by the Border Force officer on arrival in the erroneous belief that they are exempt from control or had right of abode, for instance, as a diplomat or holder of a British overseas citizen passport.

Such people are illegal entrants, but the unwitting nature of their entry may be a mitigating factor and each case must be considered on its merits.

If a person would have qualified for leave to enter, submit a report to a Home Office casework section, as it may be appropriate for them to be advised to apply for leave to remain.

Crew entering illegally

Crew member of a ship or aircraft who are found to have entered the UK illegally, are liable to administrative removal under section 10 of the Immigration and Asylum Act 1999.

The effect of section 8 of the Immigration Act 1971 is that a member of the crew of a ship or aircraft may not have entered without leave illegally if either:

- they entered under the condition that they leave on the same ship or aircraft as a member of the crew
- they leave within 7 days as a member of the crew of another ship or aircraft and they have not breached the conditions of their entry

Section 33(1) of the Immigration Act 1971 defines 'crew' as all people actually employed in the working or service of a ship or an aircraft. In practical terms, this may include for example waiters, croupiers, hairdressers, painters and repairmen arriving with the ship from abroad and departing with it or being repatriated. However, crew lists sometimes include supernumeraries and passengers. Such people may not be regarded as crew members and do not benefit from section 8(1) of the Immigration Act 1971.

Where the above definition is met, serve form IS85A (notice to subject that they are to be removed as a crew member).

See also: Seamen.

No evidence of lawful entry

See: Safeguarding and establishing lawful residence.

Illegal entry consideration in respect of children

When investigating suspected illegal entry by children and when considering cases involving children, the duty imposed by section 55 of the Borders, Citizenship and Immigration Act 2009 with respect to having regard to the need to safeguard and promote the welfare of children must be complied with.

See also section 'Administrative interviews: children' of Enforcement interviews.

Deceptive illegal entry

This section provides guidance on how to consider a case of someone who obtained permission to enter or stay in the UK by deception.

A person can be an illegal entrant under s33 of the Immigration Act 1971 if they have entered, are entering or seeking to enter in breach of a deportation order or immigration law or who has entered, is entering or seeking to enter by means of deception.

Entry by deception occurs where the entrant:

- makes or causes to be made a false representation contrary to s26(1)(c) of the Immigration Act 1971 and such deception is the effective means of entry

- enters the UK by means including deception under section 24A of the Immigration Act 1971
- enters or seeks to enter by means which include deception by another person

This section relates only to illegal entry for the purposes of **administrative immigration control** and describes the types of breach that may result in a person being considered to be an illegal entrant under section 33(1)(a) of the Immigration Act 1971 and liable to administrative removal under section 10 of the Immigration and Asylum Act 1999.

This section does **not** describe the requirements for the offence of illegal entry under section 24(1)a of the Immigration Act 1971. See: Criminal and Financial Investigation guidance.

See also: Dealing with potential criminality guidance.

Definitions of terms:

See: Coercive powers and definitions.

Relevant deception: this guidance makes reference to 'relevant deception'. In this context 'relevant deception' means the deception used in relation to an issue which is or may be determinative of the application for permission to enter or stay. Whether or not it is necessary to prove that the deception used was relevant depends on the case types and these are described below.

Note: that where the relevant legislative provision requires the permission to have been obtained by deception, you must be able to show that permission would not have been granted but for the deception.

Balance of probabilities: the term 'balance of probabilities' is used extensively throughout this guidance in relation to the necessary standard of proof required to decide a person is an illegal entrant. Balance of probabilities means that there is proof that the fact in issue more probably occurred than not.

Burden of proof: the onus, as always in such situations, is on the officer making the assertion to prove their case and the evidence needs to be of sufficient strength and quality to justify a finding that deception has been used and must be scrutinised carefully before a decision is made.

See also: enforced removal: notice periods.

To establish illegal entry by deception it must be shown that, on the balance of probabilities, the person has sought to enter the UK, or entered the country having obtained permission to do so, by practising some form of deceit or fraud.

Non-disclosure of a material fact (that is, one that is relevant to an issue which is or may be determinative of the application for leave) can also amount to entry by deception in breach of immigration law (that is, if there was dishonest intent) and a

person seeking/gaining leave to enter by such a deception is an illegal entrant as defined by section 33(1) of the Immigration Act 1971.

See: Suitability: false representations, deception, false documents, non-disclosure of relevant facts for further information.

Where there is evidence of leave, the IO will have to prove illegal entry by deception on the balance of probabilities that deception was employed to obtain entry to the UK before illegal entry action can be considered.

Where a person seeks or gains limited leave to remain by deception, that is, by making false representations, submitting false documents or false information, or fails to disclose relevant facts in relation to, or in support of an application that permission needs to be cancelled before a removal can take place.

The deception does not need to be relevant to the application for permission to enter or stay or employed with the applicant's knowledge where it is 'active' deception; that is, where an individual submits false or fraudulently obtained documentation or makes a false statement. In contrast, where the deception relates to the non-disclosure of facts, it must be relevant to the immigration decision.

Where permission has been extended under section 3C of the Immigration Act 1971 and you can prove that it is more likely than not the applicant used deception in the application for permission to stay, you can cancel that permission and would need to do so before removal can take place. See: 3C leave guidance.

Where a person has obtained indefinite leave by deception consideration can be given to revoking the leave under section 76 (2) of the Nationality, Immigration and Asylum Act 2002, as amended by the Immigration Act 2014. The deception must have been material to the grant of indefinite leave. If the leave would have been granted regardless of the deception, section 76(2) cannot be used to revoke the person's indefinite leave. See: Revocation of indefinite leave guidance.

Evidence of deception must be clear and unambiguous. Where possible, obtain original documentary evidence, admissions or statements from 2 or more witnesses which substantiate that deception has been used.

The evidence must always prove **on the balance of probability** (proof that the fact in issue more probably occurred than not) that deception had been used to gain the leave / permission, whether or not an admission of deception is made. The onus, as always in such situations, is on the officer making the assertion to prove their case and the evidence needs to be of sufficient strength and quality to justify a finding that deception has been used and must be scrutinised carefully before a decision is made.

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Documentary deception

It is an offence under section 26(1)(d) of the Immigration Act 1971 to alter documents issued or made under, or for the purposes of the Immigration Act 1971. It is also an offence to use or possess any passport, certificate of entitlement, entry clearance, work permit or other document which the holder knows, or has reasonable cause to believe, to be false. For instance, where the document used to obtain leave has been altered, modified or counterfeited.

Where a foreign national has entered by presenting a passport, to which they are not entitled, they have employed deception in breach of section 26(1)(c) of the Immigration Act 1971 and have no valid leave. This makes them liable for administrative removal.

Third party deception

Section 33(1)(b) of the Immigration Act 1971 states that an "illegal entrant" includes a person "entering or seeking to enter by means which include deception by another person". This means that a person can be an illegal entrant if a third party has dishonestly secured their entry. It makes no difference that the entrant knows nothing of the breach of immigration law they are committing.

In the case of **Khan** (1977), it was held that the person was an illegal entrant despite the fact that she was unaware that her husband had presented a false passport to secure her entry. In the case of children, the deception of a parent is imputed to the children.

Where third person deception has been used on the child's behalf, such as by a parent, even if the child is unaware of the deception employed, they may be treated as if they were party to the deception perpetrated by the third person. Section 33(1) of the Immigration Act 1971 includes in the definition of an illegal entrant, a person entering or seeking to enter by means which include deception by another person.

See also: Illegal entry consideration in respect of children.

Deception when entry clearance has effect as leave to enter

Article 4 of the Immigration (Leave to Enter and Remain) Order 2000 sets out the extent to which entry clearance has effect as leave to enter.

The Entry Clearance Officer (ECO) does not grant leave but issues an entry clearance that has effect as leave to enter when the person arrives in the UK. An IO at a port of entry then conducts an examination to establish that:

- the passenger is the rightful holder of the document and that the visa (entry clearance) is genuine
- there has been no change of circumstances to cause the leave to be cancelled

Where a person has employed deception in their application for entry clearance in order to obtain an automatic conferral of leave to enter upon arrival in the UK, they will be guilty of an offence under section 24A of the Immigration Act 1971, as they will have obtained leave to enter by deception. It does not matter that the person deceived the ECO rather than the IO as the deception ultimately led to the obtaining of leave to enter.

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Returning illegal entrants

A person who has apparently returned to the UK and been granted entry having previously been dealt with as an illegal entrant or other offender will merit close questioning as to whether the full facts of their immigration history were known when they were granted leave. Consideration must be given to whether, if the full facts and circumstances were known to the person granting leave or entry clearance, the facts would have materially altered the grounds on which they based their decision and that they would have been bound to have refused leave. That being the case, the individual employed deception and their leave is not valid.

Liability to removal: re-entry ban

This applies if the individual has previously breached immigrations laws, and the time period associated to that ban (“relevant time period” in Part 9 of the Immigration Rules) must elapse before they can be considered for re-entry into the UK.

The length of re-entry ban which applies varies, for the following reasons:

- 12-month ban: this applies to those who leave voluntarily at their own expense, increasing to 2 years if they either fail to depart within 6 months of a notice period, no longer have a pending appeal, or depart at public expense
- 5-year ban: this applies to those who fail to comply within 6 months of the latter
- 10-year ban: this applies to those who use deception, or are deported or removed from the UK

You must take note not to compare deportation orders to 10-year bans, which they are often applied in parallel with, on the basis that the former remains extant until such time it is revoked.

See: Re-entry bans guidance for further information.

Entry in breach of deportation order, exclusion decision or exclusion order

Non-European Economic Area

A deportation order against a person invalidates any leave to enter or remain in the UK given to them before the order is made or while it is in force. An exclusion decision prohibits entry to the UK while it remains in force. Under section 33(1)(a) of the Immigration Act 1971, a person who enters or seeks to enter, or has entered, in breach of a deportation order is an illegal entrant. Where the deportation order or exclusion decision was made in respect of conduct committed after 31 December 2020, the person is liable to removal from the UK under section 10 of the Immigration and Asylum Act 1999.

Where removal action is considered in respect of a person subject to a deportation order made under the Immigration Act 1971 or UK Borders Act 2007 for conduct committed before 31 December 2020, you must consider whether they are a person who has rights protected by the Agreements (or the UK's domestic implementation of the Agreements). If they have such rights and have an in time pending EUSS application (or reasonable grounds for not meeting the deadline), you must consider this application before removal action.

Where the conduct was committed before 31 December 2020 this must include a consideration of the public policy, public security and public health test. Where the test is met you may proceed with service of a notice of liability to remove, noting your justification as entry in breach of a deportation or exclusion order. The person cannot be removed until their appeal rights are exhausted or the EUSS refusal is certified under regulation 16 of the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020.

If the public policy, public security or public health test is not met, the non-conducive deportation order or exclusion decision must be revoked and the EUSS application granted (subject to the person meeting the validity, eligibility and other suitability criteria). The person cannot be removed in this case. See: EEA decisions on grounds of public policy and public security for the definition of a person who has rights protected by the Agreements (or the UK's domestic implementation of the Agreements).

European Economic Area deportation or exclusion orders

A deportation order made under the EEA regulations 2016 invalidates any leave granted and cancels residence rights of those persons who were lawfully resident in the UK under these regulations before the end of the transition period. An exclusion order prohibits entry to the UK while the order is in force.

Regulation 32(4) of the EEA Regulations 2016, as saved by the Citizens' Rights Regulations 2020, provides for those to whom the Citizens' Rights Regulations 2020 apply to be removed as illegal entrants under Schedule 2 of the Immigration Act 1971 on the grounds of entry in breach of a deportation or exclusion order made

after 11:00pm GMT on 31 December 2020 by virtue of a decision under the EEA Regulations 2016. You may proceed with service of an ICD.5008 in these cases.

Regulation 16(4) of the Frontier Workers Regulations 2020 provides for those who have entered the UK in breach of a deportation order made under regulation 15(1)(b) of the Frontier Workers Regulations 2020 to be removed as illegal entrants under Schedule 2 of the Immigration Act 1971 on the grounds of entry in breach of a deportation order made under regulation 15(1)(b) of the Frontier Workers Regulations 2020. You may proceed with service of an ICD.5008 in these cases.

For all other persons who have entered in breach of a deportation order made under the EEA Regulations 2016, it will be appropriate to consider removing them as an illegal entrant under section 10 of the Immigration and Asylum Act 1999, as effected by Schedule 3 of the Immigration Act 1971 and use a notice of liability to remove.

An outstanding application for EUSS leave will be suspensive of removal. Where the application has been finally determined but an appeal is pending, it will also be suspensive of removal unless the decision was certified under regulation 16 of the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020.

See also: EEA public policy and public security decisions.

Liability to removal: overstayers

Checking and verifying current status

You must verify whether the individual has ever been granted leave and if so, what the current status of that leave is.

See: Safeguarding and establishing lawful residence.

Evidence of overstaying

A person who overstays their limited permission is liable to administrative removal under section 10 of the 1999 Act. When considering the applicability of section 10 removal powers it is best practice to apply the interpretation of overstaying as found in paragraph 6 (Interpretation) of the Immigration Rules:

'Overstayed' or 'Overstaying' means the person has stayed in the UK beyond the latest of either:

- the time limit attached to the last permission granted
- the period that the permission was extended under sections 3C or 3D of the Immigration Act 1971

There must be proof of overstaying, and the following non-exhaustive list of sources can be referred to, to establish that the person is an overstayer:

- Home Office records including files and data records

- passport
- some other form of documentary evidence that is clearly related to the person, their travel and entry to the UK, such as a landing card
- the person's own admission as to their date of entry and duration of leave

Do not always accept at face value that the last entry in a passport is the last date of entry as they may have left and subsequently re-entered on another passport, clandestinely or in some other way, or because they last entered on or after 30 July 2000 under one of the provisions of the Immigration (Leave to Enter and Remain) Order 2000.

Where there is insufficient evidence to support the contention of overstaying, submit a report to the relevant casework section for consideration of further action. Where possible, the report must contain a statement about the person's claimed status and circumstances and must refer to any other supporting evidence.

Permission extended by 3C and 3D

When a person makes an in-time application for variation of their permission, and the permission then expires before a decision is taken, section 3C of the Immigration Act 1971 (the 1971 Act) means that the permission, and any conditions attached to that leave, automatically extends to the point at which the decision on the application is made (note that an invalid application does not trigger 3C leave (Supreme Court decision)). The 3C permission continues during the period that an in-time appeal could be brought, even if no appeal is submitted. If no appeal is brought the permission ends at the same time as the deadline for raising an in-time appeal. If an appeal is lodged, the 3C permission and the conditions attached to that permission continue while the appeal (under section 82 of the Nationality, Immigration and Asylum Act 2002) is pending.

Section 3D of the 1971 Act provided a similar protection where a person's permission is cancelled (formerly referred to as curtailment of leave) or revoked and they have a right of appeal against that decision. Note, however, that as of 6 April 2015 cancellation of permission and revocation of leave decisions do not give rise to a right of appeal. For more information see guidance 3C and 3D leave.

Note that:

- an invalid application does not trigger section 3C (see Mirza and Ors, R (on the applications of) v Secretary of State for the Home Department [2016] UKSC 63 (14 December 2016)
- following amendments made to the appeals regime by the Immigration Act 2014 on 6 April 2015, cancellation (non-EUSS) and revocation decisions no longer give rise to a right of appeal, with the result that section 3D applies only to persons whose leave was curtailed (now referred to as cancelled) or revoked **prior to that date**

Liability to removal: workers in breach

Where a person is found to be working in breach of a restriction or prohibition on employment as set out in the conditions of their visa to enter or stay in the UK, their permission may be cancelled under paragraph 9.8.8 of the Immigration Rules , such that they become liable to administrative removal under section 10 of the Immigration and Asylum Act 1999. Cancellation under paragraph 9.8.8 is discretionary, so you must consider all the circumstances in deciding whether to cancel permission.

The breach must be of sufficient gravity to warrant such action. There must be firm and recent evidence (normally within 6 months, but consider on a case-by-case basis) of working in breach, including at least one of the following:

- an admission by the offender of working in breach
- a statement by the employer implicating the suspect
- documentary evidence such as pay slips, the offender's details on the pay roll, national insurance records, tax records, P45
- sight by the Immigration Officer (IO), or by a police officer who gives a statement to that effect, of the offender working, preferably on 2 or more separate occasions, or on one occasion over an extended period, or of wearing the employer's uniform

In practice, sight only evidence will be insufficient and must be backed up by other evidence.

Where the evidence points only to a breach many months in the past a warning must be issued, and a report submitted.

See: Cancellation and curtailment of permission and Suitability: previous breach of immigration laws.

See also: Illegal working guidance.

Frontier worker

A Frontier Worker is an EEA national who pursued an economic activity in the UK by 31 December 2020 (by being employed or self-employed), and continues to do so, but is not primarily resident in the UK. Their travel to the UK can be occasional or ad hoc (for example, once or twice a year, or to complete occasional contracts) or regular (for example, working in the UK during the week and returning home at the weekend). The basic requirements to be a frontier worker are that the EEA national:

- is not primarily resident in the UK, which means they either:
  - spend less than 180 days in the UK in any 12-month period
  - return to their country of residence at least once every six months
  - return to their country of residence at least twice in every 12 months
  - undertakes meaningful and effective work in the UK

EEA Frontier workers have a right to enter the UK and do not require permission to enter. From 1 July 2021 it is mandatory for non-Irish frontier workers to hold a frontier worker permit on entry to the UK for the purpose of exercising frontier worker rights. See also: EEA operational guidance post grace period.

Service Providers from Switzerland (SPS)

Individuals of any nationality employed by a business or company based in Switzerland, and who need to travel to the UK to provide a service on behalf of their employer. The work must be to execute a contract that was signed and commenced before 11pm 31 December 2020.

Since 1 January 2021, EEA citizens wishing to provide services in the UK must have permission to do so. Some Service Providers based in Switzerland will meet the criteria in "Appendix Service Providers from Switzerland" in the Immigration Rules, but must still obtain an SPS visa in advance of travel.

Swiss nationals (only) can be self-employed service providers, but must also be based in Switzerland, and must have a contract which meets the requirements above. Service Providers from Switzerland must obtain entry clearance in advance of travel. The vignette allows the holder to enter the UK and execute the relevant contract or contracts - work does not have to be undertaken in a single 90-day consecutive period, and the holder is entitled to enter the UK on multiple occasions. However, no other work is permitted. An SPS EC does not prevent individuals from also travelling to the UK as a visitor if they have permission to do so. See: Service Providers from Switzerland caseworker guidance.

Establish whether the individual has a valid SPS visa, which will be a hard copy document for all individuals. For most nationals the visa will be attached to their passport, but for Swiss nationals (only) this can instead be attached to a Form for Affixing a Visa (FAV). In such cases, the Swiss national must also be able to present their national identity card.

There will be multiple 'cohorts' of service providers based in Switzerland who provide services in the UK - only those who meet the criteria of Appendix SPS are considered a protected cohort. Even for those eligible under Appendix SPS, a visa must be obtained in advance of travel, and individuals unable to produce this should be considered as working in breach of their visit leave (if this was the leave used to enter the UK), if they are found to be providing services during their stay.

You should note that SPS visa holders are entitled to enter the UK on multiple occasions during the visa's validity period and are not required to use their annual 90-day work entitlement in a single consecutive period. You should not routinely request evidence of how many days work the individual has performed in the UK. However, you should confirm that the individual has not been in the UK for more than 90 days, as this would mean their SPS leave had expired.

You should note that any nationality is eligible under Appendix SPS, and that the same suitability thresholds apply irrespective of nationality. This is the EU public policy, public security or public health test (where it relates to conduct committed

before the end of the transition period), or the UK deportation threshold (on the ground deportation is conducive to the public good) where criminality occurred after the end of the transition period.

Note: A service provider from Switzerland (in the context of Appendix SPS) can be an individual of any nationality – all nationalities must obtain an SPS visa in advance of travel.

Related content
Contents

Step 3: Assess liability to removal

This page tells you about the factors to consider when assessing a person's circumstances, and whether they qualify for leave or whether they are liable to administrative removal.

You must note that liability to removal is an ongoing assessment. You may receive further information or evidence during this part of the process which you need to consider, and which could change the course of action you are going to take.

There are three key considerations within step 3:

Establishing residence or citizenship rights:

- you must make a careful and thorough assessment to establish residence or citizenship rights - you must be mindful of any possible European Economic Area (EEA) rights and any UK citizenship rights - see: Safeguarding and establishing lawful residence

Compassionate circumstances:

- you must carefully consider compassionate circumstances - you will need to consider the following, non-exhaustive factors:
  - the person's length of residence
  - the person's physical and mental health
  - the person's family ties
  - exceptional circumstances

Public harm:

- in assessing the person's liability to removal, you must consider the following, non-exhaustive factors:
  - the person's immigration history
  - any criminality
  - any intelligence
  - any danger to the public which the person poses
  - referrals to and from other business areas

Initial encounter: considering service of the notice of liability to remove

Where applicable, this section should be read in conjunction with EEA operational guidance post grace period.

See also: enforced removal: notice periods.

During all enforcement interviews:

- fully explain your purpose in establishing the person's status
- act flexibly and sensibly in assessing available evidence where travel documentation and entry / exit records are not immediately available
- act objectively and based on all available evidence, without preconceptions about the likelihood of the individual being an EEA citizen based on any protected characteristic, or any other individual characteristics such as spoken language; see: Enforcement interviews

Where there are grounds to suspect the individual has vulnerabilities or needs that mean they may not understand or be able to act upon information and advice about their immigration status see: Identifying people at risk.

- you must fully consider and apply the guidance contained in safeguarding – establishing lawful residence and the additional information contained within the EEA operational post grace period guidance, see assessing evidence
- encounters with any individual during visits and operations must be recorded on Pronto in accordance with existing instructions - a person record should be created on Atlas if none already exists and in cases of people believed to be EEA citizens service of a 28-day notice for EUSS must be recorded on Atlas, see: 28 day notice for EUSS and record of encounter in the EEA operational post grace period guidance

Any examination of available evidence also provides the opportunity to consider evidence or suspicion of vulnerability. See: Identifying people at risk.

The enforcement interviews guidance must be followed when encountering any person on a visit or operation and applies equally to those who claim to be, or there are grounds to suspect that they are, an EEA citizen or their non-EEA family member. **You must ensure that you are fully aware of and understand the information in that guidance relating to exploratory questioning.** The purpose of exploratory questioning is to form a view of whether the individual is potentially related to the intelligence basis for the operation or that they are subject to immigration control and whose status may warrant further, formal examination in accordance with paragraphs 2 and 2A of schedule 2 to the Immigration Act 1971.

More generally, exploratory questioning is necessary to eliminate individuals from an enquiry as quickly as possible. A refusal to answer questions or provide proof of their status does not, of itself, constitute grounds to reasonably suspect that the person is an immigration offender but may be considered in conjunction with other evidence and circumstances.

If following exploratory questioning you have information or a reasonable suspicion that they require leave and do not have it, you must continue to examine their status.

If, because of that examination, you have reason to suspect that the documents presented may be stolen, being misused, are counterfeit, or that the person is not otherwise entitled to them, you may reasonably suspect that the individual is seeking to conceal their identity and status and may be a person subject to control under Immigration Act 1971 and liable to removal. However, in all circumstances, you must

consider whether there are any grounds to suspect that they may be entitled to some other permission or residual right, for instance, a legacy right to citizenship.

See also: Safeguarding considerations

Consideration of a family members liability to removal

The following is guidance on removal of family members of a person being removed or who has been removed.

See also Family separations.

Section 10 of the Immigration and Asylum Act 1999 (as amended by the Nationality and Borders Act 2022) also provides for the removal of family members and now includes relatives beyond spouses and children. The section provides for the removal of family members as follows:

> for the purposes of section 10(2) of the Immigration and Asylum Act 1999 (as amended), the following shall be regarded as members of the person's family provided they are not British citizens or entitled to enter or remain in the UK by virtue of an enforceable European Union (EU) right or of any provision made under section 2(2) of the European Communities Act 1972:
>
> (a) their partner
> (b) their child, or a child living in the same household as the person being removed in circumstances where they have care of the child
> (c) where the person being removed is a child, their parent
> (d) an adult dependent relative

And where the family member has leave to enter or remain in the UK, that leave was granted on the basis of their family life with the person, or if they do not have leave would not qualify to remain in their own right but would be granted leave on the basis of their family life with the person, if the person had leave to enter or remain.

Note that under section 10(6) of the Immigration and Asylum Act 1999 a notice given to a family member under subsection 10(2) invalidates any leave to enter or remain in the UK previously given to the family member.

The Immigration (Removal of Family Members) Regulations 2014 govern the time period for removal of family members (same as now) and how to serve the notice of removal.

If a family member is not encountered with the main applicant but comes to attention later, removal can take place provided the removal occurs within 8 weeks from the removal of the main applicant. After that period the family member must be treated in their own right.

Family members will be served with the Notice of Liability to Remove. see: enforced removal: notice periods.

For example wording to use in these cases, see: enforced removal: notice periods.

Consideration of an unaccompanied child's (non-asylum seeker) liability to removal

Section 55 of the Borders, Citizenship and Immigration Act 2009 places an obligation on the Secretary of State to take account of the need to safeguard and promote the welfare of children in the UK when carrying out immigration, asylum and nationality functions.

For information on safeguarding measures and relevant agencies to contact if you encounter an unaccompanied child, see also:

- Identifying People at Risk
- Border Force guidance - Children

If you encounter an unaccompanied child who has not claimed asylum, is undocumented and has no lawful status upon their arrival into the UK, in addition to carrying out safeguarding measures, you need to determine whether they are removable, and if so, whether you can make appropriate reception arrangements for them to return to their destination country safely.

There are 3 key considerations you need to make, with varying outcomes:

1. Where the unaccompanied child is removable and you are able to make appropriate reception arrangements for them to return to their destination country safely, you may decide, having taken account of all the circumstances and facts of the case, to serve a notice of liability to remove and to remove them from the UK. See: 'Removal of an unaccompanied child' in the guidance on Children.
2. If you establish that the unaccompanied child is not removable, and you are unable to make appropriate reception arrangements for them to return to their destination country safely, you may decide that it is appropriate to grant them immigration bail until they turn 18, when fresh consideration should be given to their case. See: Immigration Bail.
3. If you establish that the unaccompanied child is not removable, and you are unable to make appropriate reception arrangements for them to return to their destination country safely, you may decide that it is appropriate to grant them a period of leave, for example on Article 8 grounds, see: Private Life. This will depend on the facts and circumstances of the case, for example, one consideration will be the length of time the child has been present in the UK.

For information on unaccompanied children who have claimed asylum, see: processing children's asylum claims.

Review and initial consideration

Where applicable, this section should be read in conjunction with **EEA operational guidance post grace period**.

Consideration of the status of individuals and their family members during any initial encounter may have been based on incomplete information. As such, further consideration by Returns Preparation caseworkers in relation to possible administrative removal must take account of all available information including that contained in Home Office records, independent health assessments, witness statements, submissions, and representations. A full and comprehensive assessment of the individual's immigration history must be completed, ensuring all previous engagement is considered.

Joining family members (JFMs) do not have saved residence rights after 1 July 2021. However, provided that they apply to the EU Settlement Scheme (EUSS) prior to the expiry of their resulting leave to enter, s.3C will mean that they have a lawful basis to stay in the UK until the refusal of that application.

Consideration of whether it is right to continue with or initiate administrative removal action must be based on the individual circumstances of each case. Consideration of relevant circumstances includes but is not limited to:

- known criminality and/or anti-social behaviour
- engagement in sham marriage behaviour as either a participant or facilitator; see: Marriage investigations
- false representations and/or deception employed during an application for EUSS
- known or suspected vulnerabilities that make it unreasonable or unrealistic to effect enforced removal - see: Appendix FM, Adults at risk in detention guidance
- new, substantive, representations concerning legality, policy and procedure

Appeal rights must be exhausted before administrative removal action is taken, including any appeal against refusal of EUSS. Where administrative removal is considered appropriate, a notice of liability to remove may be served.

For individuals from the European Economic Area, form IS151a (EEA) is no longer to be served except in some voluntary departure cases (see: Voluntary departures guidance). This includes those whose status and any associated offences can be traced and determined prior to 1 January 2021 and who might, at that time, have been liable to removal because they were not exercising treaty rights. Extant appeals against decisions under the European Economic Area (EEA) Regulations in force before 1 January 2021 are still valid and must be processed appropriately. Equally, appealable decisions made under the saved EEA Regulations during the grace period continue to generate an appeal right and will be considered and determined.

Where representations indicate that an individual is eligible to apply under the EUSS they should be signposted towards making an EUSS application to regularise their status in the UK.

Where there are grounds to suspect the individual has vulnerabilities or needs that mean they require more help to make an application, act immediately to refer them to UKVI. See: 'Vulnerability issues: suspected or identified' in the EEA operational

guidance and Identifying people at risk. See also in this guidance: Consideration of medical vulnerabilities.

Following the service of a notice of liability to remove, bail conditions can be imposed as appropriate, including reporting restrictions, by service of form BAIL201. It may be appropriate to await consideration of any representations following a statement of additional grounds before imposing such restrictions. The establishment of reporting restrictions may offer a further opportunity to obtain information regarding vulnerabilities or mitigating circumstances for not applying to the EUSS.

Status granted by the EUSS supersedes previous notice of liability except where there is an extant deportation or exclusion order.

If an individual applied under EUSS and the application has been refused, all appeal rights must be exhausted, and a full assessment of all relevant circumstances completed before further deciding appropriate action. Where the individual holds no protection from the Citizens' Rights Agreement or eligibility to apply under the EUSS, the case may be considered for administrative removal action. See: ‘assessing evidence/deciding next action’ in the EEA operational post grace period guidance.

Previous service of 28-day notice for EUSS

Where an individual was previously served with a 28-day notice for EUSS but has not acted on that advice and information within the timeframe specified in the notice, they must be examined and assessed according to this guidance as to whether they are a person liable to administrative removal and whether it is right to commence that administrative process. However, you must:

- check the record of previous service and whether any exceptional circumstances were noted at the time of that encounter on relevant Home Office systems concerning possible vulnerability suggesting the individual might need further help and direction
- check for any referral to UKVI alerting them to the fact that a vulnerable person was identified

Failure to act on the advice within the 28-day notice for EUSS does not remove or negate any other lawful status that exists. You must remain alert to the possibility that an individual may have lawful status or permission but does not understand that this is the case.

Where information suggests that further steps are being taken to address special needs, no further steps should be taken to commence administrative removal action until the individual’s eligibility for EUSS has been considered and further check are made to identify any other basis of stay. No further 28-day notice should be served.

Initial evidence assessment: continuation of enforcement action

This section is about whether the grounds established during investigation make it reasonable and proportionate to consider administrative enforcement action other than voluntary return. Enforcement action in this context means a decision to move directly to service of notice that the individual is liable to be removed.

Any request by an individual to voluntarily leave the UK should be referred to the Voluntary Returns Service who will conduct the necessary checks. See: 'voluntary departures eligibility' in EEA operational guidance post-grace period.

You must attempt to investigate any individual you may encounter while conducting your enquiries to establish:

- their lawful status and whether they are a person subject to control under the Immigration Act 1971
- whether they have a lawful right to reside in the UK or other permitted basis of stay
- liability to any civil penalty, see: consideration of civil penalty in EEA operational guidance post-grace period

You must conduct such enquiries within the constraints described elsewhere in Immigration Enforcement General Instructions.

The degree of available information on which to base a decision to continue investigation, and the nature of that investigation, is dependent on the nature of the information given and the degree of co-operation offered by the individual during exploratory questions or Schedule 2 examination.

Those that cannot or will not provide satisfactory evidence of their status, or otherwise will not assist you in establishing such evidence, present the greatest risk of inappropriate arrest and it is vital that you explore every practical means of gathering information to help justify your decision to proceed or not to proceed.

You must consider several possibilities including that:

- the individual may have a lawful status but is exercising their legitimate right not to disclose personal data – there is no coercive power to make someone co-operate with exploratory questioning and they may have legitimate reasons for not wanting to talk to you - the individual may be reassured by an explanation of your purpose and aims
- they may have a right to reside whose nature they do not understand or which they are unaware of; for instance, the fact that an individual may have applied for and been refused a status under the current immigration rules does not invalidate any pre-existing right that may exist - the individual may not have been aware of their entitlement when making their application
- they may have no basis of stay and are seeking to evade further investigation by obstructing your enquiries– being uncooperative can never, on its own,

provide reasonable grounds that an offence has been committed but may, in combination with other information and circumstances, contribute to your concluding that they are attempting to conceal unlawful acts or status
- you may have misunderstood or misinterpreted information that means further advice is needed – it is recognised that EU and UK nationality law is highly complex, and it is reasonable for you to act with caution and seek further advice and clarification where necessary

What can be considered reasonable grounds in the context of the circumstances described requires an objective assessment of:

- evidence of vulnerability material to whether the individual has the physical and/or mental capacity to understand and deal with the administrative requirements of the immigration regulations
- the circumstances in which the individual was encountered – for instance, the nature of the premises, their activity and associations when encountered
- any supporting evidence available from Home Office databases and paper records – that may prompt someone who is reluctant to engage with you to confirm or dispute the information and/or reassure them that you have a legitimate need to clarify the accuracy of the data
- whether their statements, if any, accord with known procedures and rules at the times stated and, in the case of those claiming to be EEA citizens, are consistent with the EEA regulations that existed at any relevant date in their account
- the strength and consistency of information within available documentary evidence – which may not be restricted to Home Office documents
- the degree to which any statements can be corroborated by other sources, such as family members, employers, landlords, the Crown Dependencies or others, see also: '[consideration of civil penalty]' in EEA operational guidance post-grace period

Any information should be considered very carefully and, if dismissed, must be re-evaluated considering any further evidence or changed circumstances. It must be reemphasised that, even if the circumstances and actions of the individual when encountered might usually be considered to undermine their credibility, they may still have actual or potential residence or citizenship rights that they are unaware of.

Those that may have apparently lost EEA residence may still be able to make a late application under EUSS and may have already done so following service of a 28-day notice for EUSS. Your assessment of whether further consideration of administrative enforcement action is appropriate must be based on a careful assessment of all available evidence and circumstances.

Safeguarding considerations

This section is about assessing and establishing whether a person has lawful residence in the UK and other safeguarding considerations which need to be carried out to assess a person's liability to removal, including a review of compassionate circumstances and public harm factors.

Assessment of lawful residence

This section is about what you must do where a case is referred to you or if you encounter an individual who, although there may be little or no evidence of their status in the UK, claims to be a British citizen, to have a saved right by virtue of having applied before the end of the grace period, to have leave to enter or remain, or to be exempt from immigration control.

Comprehensive guidance is contained in 'safeguarding – establishing lawful residence' about the steps that must be taken in relation to those who may have been long resident in the UK or descended from people born abroad with a claim to be British. That guidance notes the difficulty that some people may have in demonstrating their lawful status in view of the complex development of UK nationality law and residence regulations; similarly, those that have enjoyed the right of freedom of movement under EEA regulations since 1973 may have limited evidence to demonstrate their national status and residence.

Individuals encountered by, or notified to, Immigration Enforcement, or who have made an application to the Home Office, may claim to be British citizens, EEA citizens that are lawfully resident or otherwise exempt from immigration control. In some circumstances, particularly those with very long residence and / or little recent travel or engagement with the Home Office, evidence may be more difficult to obtain. Those who are unable to immediately provide proof of their status may not be able to do so for a variety of valid reasons and a careful assessment must be made to determine whether it is likely either that the individual is attempting to conceal their unlawful status or whether they have a credible claim to be lawfully resident. See: 'assessing evidence' in EEA operational guidance post grace period.

UK born children holding British citizenship

See also: Safeguarding: establishing lawful residfence.

UK-born children who are British citizens by virtue of the fact that one of their parents is British or settled here:

- are **not** liable to removal
- must **not** be served with either the IS.92 (UK) or a notice of liability
- may still be expected to accompany their parent abroad

People not subject to, or exempt from, immigration control

British Citizens and people with a right of abode in the UK are not subject to immigration control. For more information concerning who is included within this definition see: Common travel area.

Additionally, various categories of individuals are exempt from the requirement to have leave and so are not subject to administrative removal under section 10 of the Immigration and Asylum Act 1999 (as amended). These include:

- consular staff: under section 8(2) of the Immigration Act 1971, in conjunction with the Exemption from Control Order 1972
- diplomats: under section 8(3) of the Immigration Act 1971 (as amended)
- members of HM Forces or certain other armed forces undergoing training in the UK (under section 8(4) of the Immigration Act 1971)

Consular staff and diplomats who have ceased to be exempt and require leave are to be treated as if they had been given leave to remain in the UK for a period of 90 days beginning on the day on which they ceased to be exempt (see section 8A of the Immigration Act 1971).

See guidance on persons exempt from control.

Evidence of identity and nationality

Further guidance about determining whether an individual may be lawfully resident is contained within: Safeguarding and establishing lawful residence.

Indicators of residence may include digital and/or documentary evidence in the form of some or all of the following:

- evidence of EUSS leave; see: Control points and data checks - online status checker
- documents previously issued by the Home Office (such as a document issued for emergency travel purposes, or a frontier worker permit) provided there is no evidence that this identity or nationality was confirmed in error, fraudulently, or has significantly changed
- an expired passport or other required document, bearing the applicant's name and photograph
- an official document issued by the authorities of the applicant's country of origin or country of residence which confirms their identity and nationality, including birth certificate, marriage certificate, driving licence, tax / social security statement, national service document, or emergency travel document or similar – this is not an exhaustive list and other similar documents may be considered
- official document issued by UK national and local authorities that may, when considered with other evidence, help corroborate residence history - this can include a UK driving licence, National Insurance number card, or tax or pension statement – this is not an exhaustive list and other similar documents may be considered
- an official document issued by the authorities of an EEA Member State which confirms the applicant's identity and nationality, including a document confirming permanent residence in that state or registration as the family member of an EEA citizen exercising Treaty rights in that state
- the applicant's biometrics (facial photograph and, in the case of a non-EEA citizen, fingerprints) which match an existing government record confirming their identity and nationality
- financial records including bank statements showing a record of in-country transactions, HMRC statements of national insurance paid, P60s

- witness statements corroborating the claim to unbroken residence provided by a person with an established personal or official connect during the relevant periods
- a travel ticket to the UK confirming previous in-bound travel as evidence of residence for the month of entry
- documentary evidence of EUSS leave granted by Crown dependencies

Where other means of ascertaining an applicant's identity and nationality have been exhausted, you may, with the individual's consent, consider referral to the embassy, consulate or high commission in the UK of the applicant's claimed country of origin or country of residence seeking confirmation as to any records held about the claimed identity and nationality. You must be satisfied that such an approach would not put the applicant or their family at risk.

See also: Derivative rights of residence.

Evidence of leave granted by EU Settlement Scheme

For further information about how to check PEGA and Atlas for EUSS applications and status, see: Control points and data checks.

Evidence of entry from outside the CTA

See also: Border Force guidance.

EU, EEA, and Swiss citizens will not be able to use an EU, EEA or Swiss national ID card to enter the UK from 1 October 2021 unless they:

- have settled or pre-settled status under the EU Settlement Scheme
- have an EU Settlement Scheme family permit
- have a frontier worker permit
- are an S2 Healthcare Visitor
- are a Service provider from Switzerland visa, **and** a Swiss national

In the cases above, they can continue to use their national ID card to enter the UK until at least 31 December 2025.

EEA citizens other than Irish citizens require permission to enter the UK. An Irish citizen does not require a grant of permission to enter, unless they are subject to a deportation order, exclusion order or international travel ban.

EEA citizens, other than Irish citizens, require a marriage visitor visa if they are travelling to the UK for the purpose of giving notice of marriage or civil partnership, or to marry or form a civil partnership whilst here, and are subject to the conditions attached to that visa.

EEA citizens are eligible to use e-Gates at ports of entry, provided that they are aged 12 years or over and are travelling using a passport with a biometric chip. EEA citizens who are otherwise exempt from control, for instance those with diplomatic

status, are also entitled to use e-gates. The only exceptions to this are EEA citizens entering under specific routes which require a passport endorsement, which are Permitted Paid Engagement (PPE) visitors and Tier 5 Certificate of Sponsorship (CoS) holders.

EEA citizens who hold existing permission to enter or stay (including under the EUSS or points based system) do not receive an endorsement in their passport and are able to use e-Gates, provided that they meet the e-Gate eligibility criteria.

EEA citizens without existing permission (with the exception of PPE visitors and Tier 5 CoS holders) do not receive written permission to enter such as a passport endorsement; they are either granted permission to enter orally by a Border Force officer or are automatically obtain permission to enter as a visitor for 6 months on successfully passing through an e-Gate. This permission is subject to standard visitor conditions unless the passenger qualifies as an S2 Healthcare Visitor or frontier worker, in which case, those conditions apply.

Family members of EEA citizens who have been granted status under the EUSS or hold an EUSS family permit do not receive an endorsement in their passport when they cross the border.

Family members of EEA citizens who are B5JSSK nationals (Australia, Canada, Japan, New Zealand, Singapore, South Korea, USA) can also use e-Gates and also do not receive passport endorsements (with the exception of Permitted Paid Engagement (PPE) visitors and Tier 5 Certificate of Sponsorship holders) when entering with existing permission or as a visitor. All other nationalities will continue to receive a passport endorsement on arrival unless they are entering with EUSS leave or an EUSS family permit.

Evidence of entry to the UK from within the Common Travel area (CTA)

See: Common Travel Area guidance.

Anyone travelling within the CTA must meet the immigration requirements of the places in the CTA that they will travel to (so someone who enters Ireland and then travels to the UK must meet both the immigration requirements of Ireland and the UK).

An individual entering the UK via Ireland may have ‘deemed leave’, for 6 months (or 2 months of deemed leave where they have previously visited the UK on the basis of deemed leave and have not left the CTA before that subsequent visit). **Deemed leave does not confer a right to take employment –** the business visitor activities they may undertake are listed in Common Travel Area guidance**.**

An individual can only benefit from deemed leave if they do not hold another immigration status in the UK (this includes an EEA national who has leave granted under the EUSS) or if they do not fall into one of the exemptions to deemed leave.

Where an individual falls into one of the following categories, they will enter the UK on that basis and do not receive ‘deemed leave’:

- those who have a right of abode in the UK
- Irish citizens who do not require permission to enter or stay
- those who have permission to enter or stay in force which was given to them before arrival
- those who have entry clearance which confers permission or those who have continuing permission under the Immigration (Leave to Enter and Remain) Order 2000 including those who hold an EUSS Family Permit
- those who are exempt from control (for example diplomats)
- those who have been granted pre-settled status or settled status under the EUSS
- those who have applied under the EUSS whose application has yet to be determined
- those who are a frontier worker under the Citizens Rights (Frontier Workers) (EU Exit) Regulations 2020)

In all other cases, the individual is entitled to ‘deemed leave’ when entering via Ireland, unless they fall under one of the exceptions detailed in Common Travel Area guidance, in which case they have entered illegally.

These exceptions are:

- a person subject to a deportation order
- a person whose exclusion has been deemed conducive to the public good
- a person who has previously been refused leave to enter the UK and has not subsequently been granted any leave
- any person who arrives (by ship or aircraft) in the UK from outside the CTA, having transited through Ireland, without passing through the immigration control there
- a visa national not in possession of a valid UK entry clearance
- any person who entered Ireland unlawfully from outside the CTA, including those who have deceived an Irish immigration official about their future intentions and then sought entry to the UK
- a person who enters the UK or Crown Dependencies unlawfully and who then travels directly to Ireland before returning to the UK
- a person whose leave to enter or remain in the UK expired (including through cancellation) before they left the UK for Ireland, and did not subsequently leave Ireland before returning to the UK
- a person who has been refused or subject to a removal decision under The Immigration (European Economic Area) Regulations 2016 or The Citizens’ Rights (Frontier Workers) (EU Exit) Regulations 2020 and has not subsequently been granted leave or admission

Any leave that is given in any of the islands of the Crown Dependencies has effect as if the permission or refusal had been given by the UK. So, when a passenger arrives with leave that was granted by any of the islands, that individual does not

require any further leave to enter. An individual arriving from the Crown Dependencies only requires leave to enter if they are:

- a person subject to a deportation order
- a person whose exclusion has been deemed conducive to the public good
- a person who has previously been refused leave to enter the UK and has not subsequently been granted any leave
- a person who no longer has permission in the relevant Crown Dependency and then arrives in the UK direct from the Crown Dependencies
- a person with limited leave in the UK, but who is subsequently refused by a Crown Dependency, or entered the islands illegally without permission, or if their presence there was unlawful

If you encounter an individual whom you suspect of having entered the UK illegally but who claims to have recently arrived in the UK from Ireland or the Crown Dependencies, you must seek to establish the person's:

- date and means of entry to Ireland or the Crown Dependencies and immigration status in Ireland in the Crown Dependencies
- immigration history in the UK if appropriate
- date and means of embarkation from Ireland or the Crown Dependencies
- subsequent entry to the UK and details of any visas

Evidence of the above may include a passport or other travel document but full account should be taken of any other documentary evidence or statements that provide reasonable grounds on which to establish date and means of entry.

If you are satisfied that the individual has no current status (as listed in the categories above) and is in breach of the conditions of their deemed leave i.e. are encountered working or have overstayed the permitted period of deemed leave, they are liable to be removed.

If you are satisfied that the individual has no current status and entered illegally due to falling into one of the exemption categories listed in the CTA guidance, they are liable to be removed. An individual with current deemed leave who is liable to removal for these reasons must be notified of the cancellation of that leave when being given notice that they are liable to removal, See Cancellation and curtailment of permission guidance.

Evidence in relation to EEA citizens

Any EEA citizen and their family member lawfully resident or who acquired a right of permanent residence in the UK under the EEA Regulations before the end of the transition period on 31 December 2020 and who has not yet obtained leave under the EU Settlement Scheme had relevant rights of entry and residence in the UK saved pending a successful application to the EUSS made before 30 June 2021. These rights continue after 30 June 2021 for those with a pending application made before 30 June 2021 or until the final determination of any appeal against a refusal of

an application made before that date. The rights do not continue in the case of those making a late application for EUSS.

EEA citizens that you encounter within the UK will be part of one of the following cohorts:

- those who have an outstanding application for the or appeal against refusal of such an application
- those who may be eligible for the EUSS but have not yet applied
- those who have been granted status under the EUSS - this will be either settled status (indefinite leave to enter or remain in the UK) or pre-settled status (5 years limited leave to enter or remain in the UK)
- those who have been granted an EUSS family permit
- those who arrive from 1 Jan 2021, with either visitor leave or leave under the points-based system
- those who have been issued with a frontier worker permit
- those who are eligible for a frontier worker permit but have not yet applied, or are Irish and therefore not required to hold a permit
- those who have been granted entry clearance as a Service Provider from Switzerland (route open to all nationalities)
- those who require leave but do not have it, for instance, clandestine and / or deceptive illegal entry
- those who entered lawfully from 1 Jan 2021 but have overstayed the period of leave which they were granted
- those who have been granted entry clearance or permission to stay as an S2 Healthcare Visitor
- Irish citizens who do not require leave to enter or remain in the UK under s.3ZA of the Immigration Act 1971: see CTA guidance
- those who may have been eligible for the EUSS in a Crown Dependency but have not yet applied or who have an application pending (see: ‘Crown Dependency EUSS’ in EEA operational guidance post-grace period)
- those who have been granted status under one of the Crown Dependency’s EUSS or other Crown Dependency leave - this will be either settled status (indefinite leave to enter or remain in the relevant Crown Dependency) or pre-settled status (5 years limited leave to enter or remain in the relevant Crown Dependency) - this status is recognised in the UK as if it were status granted under the UK’s EUSS
- EEA citizens joining family members; see: ‘family members’ in EEA operational guidance post-grace period

Note: For those in the healthcare cohort, an accompanying person can be a family member, a friend, or a carer. There is no requirement for the accompanying person to be an EEA national.

From 1 July 2021 onwards (save for pending in-time applications or outstanding appeals) a person with rights under the agreements must have EUSS leave, leave as a Service Provider from Switzerland or under the S2 Healthcare cohort, or be a frontier worker’. For those EEA citizens and their family members who have already obtained EUSS leave, it is this leave that is the basis for their continuing lawful

residence in the UK. From 1 July 2021 onwards (subject to pending applications or outstanding appeals) a person who does not have any other status granted by the immigration rules must have EUSS leave or fall within one of the other cohorts with rights under the agreements. The ongoing challenge for Immigration Enforcement (IE) is to:

- identify and, where appropriate, assist those who have a reasonable excuse for failing to apply to the EU Settlement Scheme by the deadline to secure leave to remain in the UK
- identify those who have rights under the citizens' rights agreements (such as frontier workers) and identify those falsely claiming to have them
- identify those who have no leave – such as those with expired leave or whose leave has been cancelled or curtailed
- take appropriate administrative removal action against EEA citizens, subject to the provisos detailed in this guidance, when the relevant statutory test is met

Those EEA citizens and their family members arriving on or after 1 January 2021 must successfully apply for leave or obtain visitor leave at the border, and meet the relevant immigration conditions under the points-based system of the parts of the immigration rules giving effect to their rights as part of a cohort protected by the relevant citizens' rights agreements (save for frontier workers). Those entering via Ireland without any other form of leave or status are deemed leave unless they are encountered during an intelligence-led control and are granted visitor leave. Those entering from one of the Crown Dependencies must have existing leave granted by that Crown Dependency, which is recognised in the UK including the relevant conditions of that leave, unless they are encountered in the course of an intelligence-led control and are granted visitor leave.

See also:

- European guidance
- EUSS guidance – in relation to reasonable grounds for late applications

Evidence of compassionate circumstances

As part of your assessment of a person's liability to removal, you should consider individual factors such as other close family members in the UK; the extent to which they may have developed a private life, contribution to the community, any vulnerabilities, such as being a victim of trafficking, having suffered persecution in the past (even if state protection or internal relocation are available), ongoing medical conditions or whether there are children involved.

Where there are insufficient exceptional circumstances to warrant a grant of leave under Article 8, Article 3 medical or discretionary leave policies, there may be other compelling compassionate grounds raised in an individual case that make it right not to continue enforcement action. See also: Leave outside the Immigration Rules.

Compelling compassionate factors are, broadly speaking, exceptional circumstances that mean that enforcing the individual's departure would result in unjustifiably harsh

consequences for the applicant or their family, but which do not render such action a breach of ECHR Article 8, refugee convention or obligations.

Length of residence

You must undertake a careful and thorough review of Home Office data systems to obtain information about the person's length of residence in the UK. For example, it may also be appropriate to access systems or databases, to check if the person has been granted a form of status under the EU Settlement Scheme (EUSS). See: Step 1: Assess and gather available information and Control Points and Data Checks guidance.

For further information about citizenship and residency rights, see the previous section: safeguarding considerations. See also: Safeguarding and establishing lawful residence guidance.

Consideration of medical vulnerabilities

The Home Office is committed to the removal of those with no legal basis to remain in the UK. However, you must take all reasonable steps to identify and assess risks to the individual and, where appropriate, take mitigating action to allow removal to proceed.

When assessing and gathering information, you must check whether there are any recorded mental or physical health issues, and whether these are claimed or evidenced and confirmed. If necessary, you should seek to obtain further information about a person's health status, with their consent as appropriate, if the information recorded is insufficient to make a fully informed assessment of their liability to removal. See: Step 1: Assess and gather available information.

Further investigation into a person's health issues could include, but is not limited to, carrying out the following actions:

- contacting the relevant prison / IRC healthcare team if the individual is detained and requesting a healthcare assessment, or where one has already been done, a copy of the individual's medical records, if you have the individual's signed medical consent
- contacting the local authority to determine whether the individual is known to them, or under their care
- in Foreign National Offender cases, contacting the assigned Probation Officer to obtain any information or reports they may have
- contacting a GP, community mental health or substance misuse team where there was previous evidence or information of a diagnosed condition, or evidence that the person received treatment but that information is out of date

Poor health or other vulnerabilities requiring special support and/or medical assistance do not, in themselves, prevent removal, but you should consider whether the risk of proceeding with a removal is proportionate when considering:

- the risks to the individual during the process of removal
- the risks that they may pose to people with whom they come into contact during detention and removal
- the harm that their continued presence in the UK presents in relation to public policy and the extent to which their removal is conducive to the public good

There are a number of guidance products available which you may need to consult in this area:

- Identifying people at risk
- Suicide and self-harm
- Victims of modern slavery
- Human rights claims on medical grounds
- Medical evidence in asylum claims
- Further submissions

A separate policy, Adults at Risk in immigration detention governs decisions about immigration detention and the continued immigration detention of individuals who are, or who may be, vulnerable. Some of the elements of the adults at risk policy may be reflected in this policy, for example, consideration of medical vulnerabilities and the two policies should be read in conjunction with one another.

Mental capacity considerations

You should refer to the Equality Act 2010, the UK Mental Capacity legislation namely, the Mental Capacity Act 2005 (for England and Wales), the Adults with Incapacity (Scotland) Act 2000, the Mental Capacity Act (Northern Ireland) 2016) and also the Mental Capacity Act Code of Practice, which provides guidance to anyone who is working with adults who may lack the capacity to make particular decisions.

An individual who possesses mental capacity can make decisions for themselves. In comparison, an individual who lacks capacity cannot do one or more of the following four things in relation to a decision:

- understand information given to them
- retain that information long enough to be able to make the decision
- weigh up the information available to make the decision and likely consequences of making – or not making – the decision
- communicate their decision

Further information on mental capacity and examples of this can be found in DSO 04 2020 Mental vulnerability and immigration detention – non clinical guidance as well as withdrawing asylum claims guidance.

You should also read this guidance in conjunction with the Adults at Risk policy and where relevant the suicide and self-harm guidance, as you will need to follow established processes and procedures to ensure you are taking the necessary safeguarding actions when an individual is deemed to have such vulnerabilities.

For further information on identifying vulnerability, assessing medical and other risks during operational visits see: identifying people at risk guidance and for the process to follow if you encounter an individual whom you consider to be vulnerable, see: EEA operational guidance post grace period.

Key principles where mental capacity issues are identified

The person who assesses an individual's capacity to make a decision will usually be **the person who is directly concerned with the individual at the time the decision needs to be made**. This means that different people will be involved in assessing someone's capacity to make different decisions at different times.

Where mental capacity issues are identified in a case you are managing and you need to assess whether that person is liable to removal, you must follow these key principles:

- consider any existing and all new information regarding mental capacity issues when assessing a person's liability to removal and before any enforcement action is taken
- make reasonable and proportionate efforts to gather information as necessary to allow you to make an informed assessment of liability to removal and consider providing a longer time period to the individual, or their representative, to submit information and evidence of any mental capacity issues, particularly in the following non-exhaustive scenarios:
  - where there are extenuating circumstances which need to be taken into account
  - where there is prior knowledge of mental capacity issues
  - where previous representations suggest there are relevant mental capacity issues which will be material in making any enforcement decision
- ensure you record all information and evidence of any mental capacity issues and any actions you take in attempting to obtain such information on the casework system, to provide an audit trail and background history on the case as an aid to colleagues for future safeguarding considerations

You should consider referring such cases to your Senior Caseworker, vulnerability champion or local safeguarding lead so that they may include it in any local complex case review and can support you to take the appropriate steps.

Based on that advice, you may need to consider additional steps which may include:

- notifying prison and or the Immigration Removal Centre healthcare of any actions you are taking, including whether you are considering service of immigration enforcement paperwork
- if you are serving such paperwork, notifying the healthcare staff as above so that they can make the necessary safeguarding arrangements for service of any immigration paperwork

See also: 'Mental capacity considerations' in withdrawing asylum claims guidance. Whilst this guidance is focused on the withdrawing of asylum claims, the key principles and considerations remain the same.

In this guidance see also:

- Step 1: Assess and gather available information
- Consideration of medical vulnerabilities
- Mental capacity issues: representations received following service of a decision

Family ties

You may have information regarding the person's family life, such as whether they have a partner in the UK, or a child and you must consider this when assessing their liability to removal. There are various guidance products on the Family guidance page which you can access for further information. A key piece of guidance for you to review is: Family life, private life and exceptional circumstances.

The person may raise that they have family ties in the UK and any such information or evidence must be considered. If you need to seek further information or evidence from the person, or an external stakeholder, such as Social Services, you must do so. See: Step 1: Assess and gather available information. See also: Safeguard and promote child welfare.

You may receive submissions or evidence which constitute a claim which requires a substantive consideration. You will need to deal with these accordingly (as a fresh claim or further submissions). See: Further submissions guidance for additional information.

You may need to conduct a family separation or a family return and should consult the following guidance:

- Family separations
- Family returns process

At all times, when there are children involved you must account for the need to safeguard and promote the welfare of children in accordance with the duty under section 55 of the Borders, Citizenship and Immigration Act 2009. Section 55 of the Borders, Citizenship and Immigration Act 2009 places an obligation on the Secretary of State to take account of the need to safeguard and promote the welfare of children in the UK when carrying out immigration, asylum and nationality functions.

See also: Working together to safeguard children statutory guidance.

Public harm considerations

All factors including character and conduct, compliance, length of residence and prospects of removal must be considered in the round to decide whether removal is no longer appropriate in the circumstances of the individual case. Individual factors must also be considered, see: Evidence of compassionate circumstances.

Your assessment of the ‘harm’ level posed by the individual may change during the life of a case. As additional information comes to light, it is important that you regularly review your assessment until either the point of removal from the UK or any decision is reached to discontinue enforcement action.

Adverse immigration history

You must consider the individual’s history of compliance with any conditions attached to any previous grant of leave to enter or remain and compliance with any bail restrictions where applicable. You will need to review the casework system, but it will also be important to review documents associated with the person’s case, such as a completed immigration factual summary. See: enforced removals: notice periods

You must take account of:

- evidence of deception practised at any stage in the immigration process, including submitting a false identity to the Home Office
- any other type of fraud or deception, such as benefit fraud or NHS debt
- failure to attend interviews as requested
- failure to supply information as requested (for example, for re-documentation)
- whether they have lodged spurious applications or further submissions to frustrate removal
- failure to comply with reporting conditions
- failure to demonstrate genuine efforts to leave the UK voluntarily
- whether they have worked illegally
- an individual’s lawful employment history and how they have supported themselves and / or their family, and
- a sustained history of compliance with every requirement the Home Office has made of them, including providing full information in their application, attending interviews, compliance with reporting requirements

You must assess all evidence of compliance and non-compliance in the round, but repeated non-compliance together with, or as a solitary factor, lengthy periods of absconding, will generally mean that an individual cannot benefit from a grant of leave because of exceptional circumstances, unless there are strong countervailing reasons in their favour. Periods of residence which are built up by actions of non-compliance attributable to the person will not count in the person’s favour.

Evidence of criminality

Whilst considering a case, you must consider evidence of current or past criminality. This may include pending criminal prosecutions against the applicant or cautions or convictions for criminal offences.

If a PNC check confirms that an individual has been convicted of a criminal offence, the case may be of interest to Foreign National Offender Returns Command (FNO RC – formerly Criminal Casework). See referring cases to Foreign National Offender Returns Command for guidance on referral criteria and how to refer a case.

Overseas criminality

If information relating to crimes committed in another country is available, then you should include this in your harm assessment, taking account of whether the activity resulted in prosecution and conviction, the time elapsed since committing the offence. In the context of this guidance, 'information' from abroad must be from an official source.

Spent convictions

The Rehabilitation of Offenders Act 1974 (RoA1974), defines when offences may be 'spent'. Previous offences are spent after a period dependent on the type of sentence given for an offence, reflecting its seriousness.

While the fact that a conviction that is spent under the ROA 1974 is relevant to the assessment of the harm posed by the individual, you, as the decision maker, must always take into consideration the age and context of an offence when assessing harm. Generally speaking, a 'spent' conviction must be given lesser weight but it may still be right to consider it as a relevant factor in the overall assessment where:

- all 'indictable only' offences carrying a custodial sentence of at least 5 years imprisonment, or any criminal offence which falls within the highest harm category where sentencing guidelines take the case out of the medium or low criteria
- subsequent similar offences are not spent
- the history of offending is likely to meet the criteria for automatic deportation

A case that ends in no further action by the police should not be used to enhance or give a higher-than-existing harm rating, nor should it be used to establish a harm rating where none would otherwise exist.

Guidance on sentencing may be obtained from web sites such as:

- Sentencing Council
- Crown Prosecution Service (England and Wales)
- Crown Office and Procurator Fiscal Service (Scotland)
- Public Prosecution Service (Northern Ireland)

Public impact assessment

This section must be read in conjunction with the following guidance products, as applicable:

- Suitability: non-conducive grounds for refusal or cancellation of entry clearance and permission
- Conducive deportation
- EEA public policy and public security decisions
- Grounds for refusal: Criminality guidance

In the context of this guidance, ‘public policy’ and ‘public harm’ are terms of art used to indicate the risk to the wider public interest of exercising discretion in favour of the individual. The risk is based on the duty of government to act in a manner that is **conducive to the public good**. This requires that decision makers:

- uphold the integrity and consistent application of the law
- protect individuals and community groups from criminality
- preserve the peace by protecting individuals and community groups from serious anti-social behaviour and / or radicalisation
- protect the public purse
- protect national security

The intention of the public impact assessment is to assess the level of possible harm to the wider community should immigration enforcement action continue or if it is discontinued. The decision maker must:

- assess all known or emerging information
- take account of any known vulnerability or other compassionate circumstance
- consider the impact on public policy (those areas bulleted above)

The decision maker may decide that, on balance, the public impact is sufficiently serious that the public good can only be served by overriding any personal vulnerability or compassionate circumstance and continuing to enforce that individual’s departure.

It is reasonable to consider whether an individual’s past behaviour and actions are still relevant in light of their subsequent behaviour and/or the time that has elapsed. See: Evidence of criminality. In the case of criminal convictions, the Rehabilitation of Offenders Act 1974 defines when offences are ‘spent’ - depending on the seriousness of the offence and the type of sentence.

Related content
Contents

Step 4: Propose next action

This page tells you what possible case outcomes can result from an assessment of a person's liability to removal. You will need to determine the action you are going to take in the person's case. You must assess what action is reasonable and proportionate, having taken account of all the information, evidence, and the circumstances of the case.

Decision of liability to removal

When encountered, a person may satisfy you that they have outstanding leave to enter or remain, but doubts may exist as to whether they continue to qualify for that leave. Where the individual's account seems credible then any necessary enquiries to establish exactly what they are doing can be followed up in a routine manner.

Enquiries must be made at the earliest opportunity to determine what action is appropriate in all the circumstances. If, despite the initial doubts, you are satisfied that the person does, in fact, continue to meet the requirements of the Immigration Rules then they must be released from detention without delay. Where, however, they no longer qualify under the rules, cancellation of permission may be appropriate.

See also enforced removal: notice periods.

Case outcomes

There are a number of possible case outcomes which can result from an assessment of a person's liability to removal. When you make your decision as to the outcome which is appropriate in the specific case you are dealing with, you must ensure that your decision is fully informed. That means that you must ensure you have gone through steps 1-3 in this guidance and that you have considered all information and evidence available to you and undertaken a thorough assessment of all the facts and circumstances of the person's case.

You may decide to take any of the following decisions:

- serve the notice of liability to remove and grant immigration bail
- serve the notice of liability to remove and detain
- withdraw any previous notice of liability to remove
- take no further action and release
- release on a warning letter
- grant leave and take no enforcement action

You must seek and obtain the appropriate level of authority associated with the decision you are taking. You must document your decision and the reasons for this on the casework system and any associated documentation.

You must record the case outcome on the casework system. See: Control Points and Data Checks.

See:

- Enforced removal: notice periods
- Immigration Bail
- Detention
- EEA operational guidance post grace period

Related content
Contents

Stage B: Consideration of active enforced removal

This page tells you the various barriers you need to consider before you proceed to actively enforcing a person's removal.

You must ensure you have followed the process outlined in stage A before you proceed to stage B. You must make all necessary checks to establish whether the person has existing leave or any other right to remain in the UK.

Page contents:

Identifying barriers to removal

Barriers to removal may include:

- judicial review
- court injunctions
- a pending application
- a pending appeal
- a pending administrative review
- representations and submissions
- an outstanding National Referral Mechanism referral
- MPs' representations
- being a witness to a death in detention

If you encounter an individual who has any one or more of the following:

- a pending appeal
- a pending administrative review

you can serve the Notice of Liability to Remove but not the Notice of Intention to Remove until you have established that they have been resolved and that the individual has no further basis of stay.

See also:

- Enforced removal: notice periods

- Arranging Removal
- Judicial reviews, injunctions and applications to the European Court of Human Rights: in relation to enforcement of immigration removal and deportation
- Cancellation and curtailment of permission
- EEA operational guidance post grace period

Rights of appeal

A person cannot be removed while an appeal that may be brought in the UK is pending. There is a time limit for appealing but, because the Tribunal can grant permission to appeal outside the time limit, a person who appeals late should not normally be removed until the Tribunal has decided whether to grant permission. For further details on appeal rights see the Rights of Appeal guidance, in particular the section 'When an appeal prevents removal'.

Administrative review

There is no right of appeal against the refusal of an application for work or study points-based system (PBS) leave (except for some transitional arrangements set out in the current rights of appeal guidance).

Where an eligible decision has been made, that is, either a decision to refuse an application for leave to remain or a decision to grant leave to remain where a review is requested of the period or conditions of leave granted, an individual may have a right to seek administrative review. Decisions eligible for administrative review in the United Kingdom are outlined in Appendix AR: administrative review of the Immigration Rules. The process is set out in the Administrative Review guidance.

An unsuccessful applicant may also apply for administrative review to challenge alleged errors in the caseworker's decision. This could be the decision to refuse the application, or where an application is granted but a review is requested of the period or conditions of leave granted.

In-time applications continue to have 3C leave until any administrative review is concluded.

Administrative reviews must be lodged within 14 calendar days from the date the applicant receives the notice or biometric residence permit (BRP) (or 7 days if in detention).

See also: Administrative review (EU Settlement Scheme) guidance.

Applications, representations, and submissions

Consideration and general principles

A person is invited to provide at key stages of consideration any grounds whether they have a right to stay, for instance:

- in consideration of deportation, service of a Stage 1 notice which contains a One Stop Notice served under section 120 of the Nationality, Immigration and Asylum Act 2002 (as amended by the Immigration Act 2014)
- in consideration of liability to administrative removal, service of a notice of liability to removal, containing a section 120 notice

Where an individual is encountered during enforcement visits and operations and their status has not previously been considered, General instructions state that officers should consider and note any circumstances and / or information suggesting that the person might have a historic claim to remain. This includes but is not limited to:

- a claim to residence or British citizenship because of previous nationality laws
- possible eligibility to make a late application for the EU Settlement Scheme

For more information see:

- Safeguarding and establishing lawful residence
- EEA Operational Guidance
- EUSS family permits
- European, EEA and Swiss Nationals guidance

An individual is expected to disclose at the earliest opportunity any relevant information they can provide to support their claim of a right to stay. For asylum cases, this is primarily achieved during their substantive interview before a decision is made, to ensure that claims can be fully considered, and protection granted to those who genuinely need it. For human rights cases, the appropriate application form, based on the reason why a person wants to remain in the UK, allows the person the opportunity to provide all the evidence relevant to their claim.

Throughout the immigration process, a person who makes an asylum or human rights claim has every opportunity to put forward all relevant evidence about why they need protection or why they should be allowed to remain in the UK on the basis of their human rights.

A person may also make a claim that they are a victim of modern slavery, or you may uncover evidence which indicates that they are a victim of modern slavery. An outstanding National Referral Mechanism referral is a barrier to removal. See the Victims of Modern slavery guidance page for further information and links to the National Referral Mechanism guidance.

You will also need to consider the source of any claims submitted by a third party as you will need to check whether the individual or organisation providing immigration advice or immigration services is qualified to do so in the UK.

Official – sensitive: start of section

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

Official – sensitive: end of section

There are a number of guidance products which you may need to review to progress a person's case, depending on the representations, further submissions or claims received. The following list is not exhaustive:

- Further submissions
- Asylum Guidance: Considering and deciding a claim
- Human rights claims on medical grounds
- Long residence applications
- Criminality – Article 8 ECHR cases
- Appendix FM and 276ADE (family members and private life): On or after 9 July 2012 (section includes various guidance products)

New information that is relevant to the decision to initiate or continue enforcement action must be fully considered prior to active removal action. However, where the information submitted has already been considered substantively and the grounds for refusal are therefore soundly based then removal action may continue subject to receiving the appropriate level of authority to proceed. See: enforced removals: notice periods and EEA Operational guidance.

Mental capacity issues: representations received following service of a decision

If, following service of an immigration or removal decision on an individual, you receive information, evidence or representations which suggest the person may not have had capacity to understand or challenge it, you must first consider the reasons why that information was not known. You must look back over the history of the case to check whether there was any evidence or information to suggest that the person had mental capacity issues so that you can determine whether this is new information. See also: Step 1: Assess and gather available information.

The withdrawing asylum claims guidance also contains a section on consideration of mental capacity and assessing whether a claimant holds mental capacity.

Where the person is detained, see: evidence of compassionate circumstances, in particular consideration of medical vulnerabilities. This section contains a list of guidance products which will be important to review. A key policy for review in such circumstances is Adults at Risk in immigration detention, as well as DSO 04 2020 Mental vulnerability and immigration detention – non clinical guidance.

Where the person is not detained, you as the case owner, must fully consider the information or evidence you have received. You will need to revisit the section on evidence of compassionate circumstances and decide what the next steps you need to take are, which will be dependent on the case circumstances.

As well as making an assessment as to whether enforcement action can and should continue in the circumstances, it will also be appropriate to make an assessment on detention and/or bail.

If the person is detained, you will need to determine whether detention can and should be maintained, or whether their release needs to be effected and if so, whether immigration bail is appropriate. If the person is not detained, but they were due to enter to detention, for example, for their removal from the UK to be effected, you will need to determine whether that can and should continue. See: Detention General instructions and Immigration Bail guidance.

Requests from legal representatives to defer removal due to mental capacity issues

Where an individual has legal representation and you receive a written request from their legal representative to defer a scheduled removal because:

- they have doubts about their client's capacity and/or they require time to obtain an assessment of their client's capacity
- an assessment has confirmed that their client lacks capacity in material domains

You must confirm that you have a signed letter of authority from the legal representative which shows that the legal representative is acting on behalf of the individual.

You must first review any information and evidence provided to you by the legal representative and where relevant within your individual team structure, discuss this with your Senior Caseworker, vulnerability champion or local safeguarding lead to determine next steps. You must also add a note to the casework system and include details of the request, the information or evidence supplied and the source of the evidence if this is identifiable, that is, whether it has been supplied by, for example, a social worker or medical practitioner or the legal representative.

Official – sensitive: start of section

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

Official – sensitive: end of section

If the individual is detained, you must refer to the Adults at Risk policy and undertake any necessary safeguarding actions. This includes, but is not limited to, raising the appropriate risk level for the individual and recording this on the casework system. The Adults at Risk policy states that professional, or official documentary evidence, which indicates that the individual is (or may be) an adult at risk should be afforded greater weight. Representations from the individual's legal representative acting on their behalf in their immigration matter would not be regarded as professional evidence in this context.

Any request from a legal representative to defer removal in the circumstances outlined must be considered on a case-by-case basis but may not automatically result in deferral of removal. For example, it is unlikely to be appropriate to defer removal so that the representative can make arrangements for expert support of the person concerned if it is clear from the history of the case that such arrangements are already in place, or if the representative has been instructed throughout the application and appeal process and has never before suggested that their client is in need of such support.

If, as part of the request to defer removal, the legal representative provides you with information or evidence on their client's capacity which is new or material to the case and may affect how you proceed, this must be considered prior to removal. Within individual teams, it may be the responsibility of the Senior Executive Officer to consider such information when making an assessment and decision as to whether to provide you with authority to remove the person from the UK.

In addition, the Safeguarding Advice and Children's Champion (SACC) can provide professional advice in both the children's and vulnerable adult social care arena. There is also an IE Central Support case queries team inbox which is a referral mechanism team of Senior Caseworkers who will provide an expert analysis of unowned cases, advise on best ways forward with complex cases and provide a coordination of functions between wider units of the business.

You must, where reasonable and practicable, conduct further investigation of the individual's circumstances, clarify evidence submitted and/or seek further evidence on which to base your decision. For instance, where evidence is incomplete, no evidence has been supplied to support the claim over lack of capacity, or evidence has been supplied but there is doubt over credibility. See: Consideration of medical vulnerabilities for examples of further investigative measures.

Deferral of removal will be dependent on a number of factors including the timing of removal, the nature and severity of the vulnerability claimed, or evidenced, and whether you need to undertake further investigation on the information or evidence supplied to you by the legal representative.

If you are given authority to proceed with removal, you must consider whether you need to book medical escorts to accompany the individual on the flight. If there is any doubt as to whether removal should continue in the circumstances, you must defer removal until you have been able to obtain the information you require in order to make a fully informed decision.

Where you have a signed letter of authority from the legal representative, you must notify them of your decision to defer or proceed with removal, providing copies of any relevant removal documentation.

MPs' representations in enforcement removals cases

An MP may contact the Home Office directly on behalf of their constituent who is liable to removal. In some cases, representations made to the Home Office and

rejected might be copied to the minister's private office. For guidance on determining whether a response to an MP should come from a Home Office official or a Minister see: MPs' correspondence policy guidance.

MPs' representations when the removal date is set

MP correspondence is a barrier to removal and must be responded to before removal can proceed, if that continues to be appropriate after consideration of the MP's representations. See: MPs' correspondence policy guidance for more information.

Where MP correspondence is received outside your business area's service level agreement (SLA) with OSCU, handle in accordance with local processes.

MP correspondence received within your business area's SLA with OSCU, the MP Contribution team, MPAM or Private Office will normally refer the correspondence directly to OSCU to deal. In Ministerial cases, OSCU will draft a reply and background note for submission to Private Office, or in a non-Ministerial case, they will send a reply directly to the MP, copying in the relevant MPAM / MP Contribution team. If you receive MP correspondence where removal directions have been served and are due to take place within your business area's SLA with OSCU, you must refer it to OSCU immediately and notify your Secretariat who will seek advice from the OSCU Duty Officer as to who should handle the correspondence.

Witnesses to deaths in detention

For information on the process to follow when deciding whether to pause the removal or deportation of any detained person who has been identified as a witness to a death in immigration detention and has potentially relevant evidence to give at the inquest or Fatal Accident Inquiry (FAI) in Scotland, see: removal / deportation of witnesses to deaths in detention – interim guidance.

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