



Home Office

EU Settlement Scheme: suitability requirements

Version 9.0

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About this guidance

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

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

Contacts

If you have any questions about the guidance and your line manager or senior caseworker cannot help you or you think that the guidance has factual errors then email the Migrant Criminality Policy Team.

If you notice any formatting errors in this guidance (broken links, spelling mistakes and so on) or have any comments about the layout or navigability of the guidance then you can email the Guidance Rules and Forms Team.

Publication

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

- version **9.0**
- published for Home Office staff on **24 September 2024**

Changes from last version of this guidance

Amendments have been made to reflect changes in the EU Settlement Scheme pending prosecution policy.

Related content

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

[Contents](#)

Related external links

[Statement of Changes in Immigration Rules: HC 1118](#)

Purpose

This section explains the purpose of this guidance.

Use of this guidance

This guidance must be used when considering whether the suitability requirements in [Appendix EU to the Immigration Rules](#) are met.

Further guidance on considering applications under the EUSS can be found at:

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

Guidance on the consideration of the EU public policy, public security and public health test as set out in the [Immigration \(European Economic Area\) Regulations 2016](#) (EEA Regulations 2016), as saved by the [Citizens' Rights \(Application Deadline and Temporary Protection\) \(EU Exit\) Regulations 2020](#) (the Grace Period Regulations 2020) and the [Citizens' Rights \(Restrictions of Rights of Entry and Residence\) \(EU Exit\) Regulations 2020](#) (the Restrictions Regulations 2020), can be found at:

- Public policy, public security or public health decisions

Guidance on considering whether to make a decision on the ground the applicant's presence in the UK is not conducive to the public good is at:

- Grounds for refusal: criminality
- Grounds for refusal: customs breaches
- Suitability: non-conducive grounds
- Suitability: sham marriage or civil partnership

Guidance on considering deportation on the ground it is conducive to the public good is at:

- Conducive deportation

The best interests of a child

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

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

Although the duty in section 55 only applies to children in the UK, the statutory guidance – [Every Child Matters – Change for Children](#) – provides guidance on the extent to which the spirit of the duty should be applied to children overseas. You must adhere to the spirit of the duty and make enquiries when you have reason to suspect that a child may be in need of protection or safeguarding, or presents welfare needs that require attention. In some instances, international or local agreements are in place that permit or require children to be referred to the authorities of other countries and you are to abide by these and work with local agencies in order to develop arrangements that protect children, promote their welfare and reduce the risk of trafficking and exploitation.

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

Specified date

Where this guidance refers to the ‘specified date’, this means 11:00pm GMT on 31 December 2020. Where relevant conduct took place on 31 December 2020 and it is unclear whether it was before or after 11:00pm, you must regard it as having been committed before 11:00pm and consider it under the EU public policy, public security or public health test.

Related content

Section 55 children's duty guidance

[Contents](#)

Related external links

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

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

[Every Child Matters – Change for Children](#)

Introduction

This section gives you background about the EU Settlement Scheme (EUSS).

Background

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

The EUSS also provides a basis for certain family members of qualifying British citizens who have returned with them to the UK after living together in an EEA country or Switzerland to apply for the UK immigration status which the family member requires in order to remain here. For guidance on applications from the family member of a qualifying British citizen, see [EU Settlement Scheme: Family member of qualifying British citizen](#).

The immigration status granted under the EUSS is either indefinite leave to enter (ILE) or indefinite leave to remain (ILR) (also referred to for the purposes of the EUSS as 'settled status') or 5 years' limited leave to enter (LTE) or limited leave to remain (LTR) (also referred to as 'pre-settled status') granted under [Appendix EU to the Immigration Rules](#). Eligibility for settled status is generally dependent on the applicant having a continuous qualifying period of residence in the UK of 5 years (or already having documented permanent residence status under the [Immigration \(European Economic Area\) Regulations 2016](#) (EEA Regulations 2016), as saved, or existing ILE or ILR).

Withdrawal Agreement

Article 20 of the [Withdrawal Agreement](#) (WA) with the European Union sets out the circumstances when it may be appropriate to restrict the right of entry or residence of an EU citizen, a family member of an EU citizen or other persons protected by the WA. There are corresponding arrangements for citizens from EEA EFTA states (Iceland, Liechtenstein and Norway) and Switzerland set out in equivalent agreements with those countries.

Article 20 of the WA states:

1. The conduct of Union citizens or United Kingdom nationals, their family members, and other persons, who exercise rights under this Title [Title II of Part Two of the [WA](#)], where that conduct occurred before the end of the transition period, shall be considered in accordance with Chapter VI of [Directive 2004/38/EC](#)
2. The conduct of Union citizens or United Kingdom nationals, their family members, and other persons, who exercise rights under this Title, where that conduct occurred after the end of the transition period, may constitute grounds for restricting the right of residence by the host State or the right of entry in the State of work in accordance with national legislation.

3. The host State or the State of work may adopt the necessary measures to refuse, terminate or withdraw any right conferred by this Title in the case of the abuse of those rights or fraud, as set out in Article 35 of [Directive 2004/38/EC](#). Such measures shall be subject to the procedural safeguards provided for in Article 21 of this Agreement [the WA].

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

Articles 20.1 and 20.2 of the WA mean in particular that, in relation to any restriction of the right of residence in the UK of a person protected by the WA, their conduct (including any criminal convictions relating to it) before the end of the transition period at 11:00pm GMT on 31 December 2020 is to be assessed according to the EU public policy, public security and public health test, as set out in the [EEA Regulations 2016](#), as saved, while their conduct thereafter (including any criminal convictions relating to it) will be considered under the UK criminality test (on the ground that it is conducive to the public good).

Related content

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

[Contents](#)

Related external links

[Appendix EU to the Immigration Rules](#)

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

[Grace Period Regulations 2020](#)

[Restrictions Regulations 2020](#)

[EEA Decisions taken on grounds of public policy](#)

[Withdrawal Agreement](#)

[Directive 2004/38/EC](#)

Overview of suitability requirements

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

Rules EU15, EU16 and EU17 of [Appendix EU](#) set out the basis on which an application under Appendix EU will or may be refused on suitability grounds.

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

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

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

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

Under rule EU15(2) an application made under Appendix EU will be refused on grounds of suitability where, at the date of decision, the Secretary of State deems the applicant's presence in the UK is not conducive to the public good because of conduct committed after the specified date.

Under rule EU15(3) an application under Appendix EU must be refused on grounds of suitability where, at the date of decision, the applicant is subject to an Islands deportation order (as defined in Annex 1 to Appendix EU) as made under the immigration laws of the Bailiwick of Guernsey, the Bailiwick of Jersey or the Isle of Man.

Under rule EU15(4) an application under Appendix EU may be refused on grounds of suitability where, at the date of decision, the applicant is subject to an Islands exclusion decision (as defined in Annex 1 to Appendix EU) as made under the immigration laws of the Bailiwick of Guernsey, the Bailiwick of Jersey or the Isle of Man.

Applicants (aged 18 or over) are required to provide information about previous criminal convictions in the UK and overseas and are only required to declare past criminal convictions that appear in their criminal record in accordance with the law of the State of conviction at the time of the application. There is no requirement to declare spent offences, cautions or alternatives to prosecution for example fixed penalty notices for speeding.

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

Applications are additionally subject to a check against the Police National Computer (PNC), where the applicant is aged 10 or over, and the Warnings Index (WI). Caseworkers can where appropriate consider evidence of criminality that they encounter on the PNC or WI even if that evidence was not declared by the applicant.

From information provided by the applicant and obtained from the PNC and/or WI, Customer Service Group (CSG) (formerly UK Visas and Immigration) must determine whether the application is to be referred to Immigration Enforcement (IE) for full case by case consideration of the individual's conduct on:

- grounds of public policy, public security or public health as set out in regulation 27 of the [EEA Regulations 2016](#), as saved, where the conduct was committed before the specified date
- the ground the applicant's presence in the UK is not conducive to the public good where the conduct was committed after the specified date

If a decision has been made by IE that falls within rule EU15(1) or (2) (such as a decision to deport or exclude the individual, or a decision that the person's presence in the UK is not conducive to the public good), the application under the EUSS will be refused by IE. The EUSS refusal must include a public policy, public security or public health consideration if the decision by IE was made on non-conducive grounds for conduct committed before 11:00pm GMT on 31 December 2020.

If the person is the subject of a pending prosecution which may result in deportation action being taken if the person is convicted, but at the point of consideration the person does not fall to be refused on suitability grounds, the EUSS application must be progressed and, if all validity, eligibility and suitability criteria are met, leave granted. If that person is subsequently convicted, deportation action may then be considered at that point.

Under rule EU16 an application under Appendix EU may be refused on grounds of suitability where, at the date of decision, the decision-maker is satisfied that:

- EU16(a) applies: it is proportionate to refuse the application where, in relation to the application and whether or not to the applicant's knowledge, false or misleading information, representations or documents have been submitted (including false or misleading information submitted to any person to obtain a document used in support of the application), and the information, representation or documentation is material to the decision whether or not to grant the applicant indefinite leave to enter or remain or limited leave to enter or remain under the EUSS
- EU16(b) applies: it is proportionate to refuse the application where the applicant is subject to a removal decision under the EEA Regulations 2016, as saved, on the grounds of their non-exercise or misuse of rights, and the date of application under Appendix EU is before 1 July 2021

- EU16(c)(i) applies: the applicant either:

(aa) has previously been refused admission to the UK in accordance with [regulation 23\(1\) of the EEA Regulations 2016](#)

(bb) has previously been refused admission to the UK in accordance with regulation 12(1)(a) of the [Citizens' Rights \(Frontier Workers\) \(EU Exit\) Regulations 2020](#); or

(cc) had indefinite leave to enter or remain or limited leave to enter or remain granted under Appendix EU (or limited leave to enter granted by virtue of having arrived in the UK with an entry clearance that was granted under Appendix EU (Family Permit) to the Immigration Rules which was cancelled [under paragraph 321B\(b\)\(i\) or 321B\(b\)\(ii\) of the Immigration Rules](#), under paragraph A3.1. or A3.2.(a) of Annex 3 to Appendix EU or under paragraph A3.3. or A3.4.(a) of Annex 3 to Appendix EU (Family Permit)

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

(aa) in respect of the applicant's conduct committed before the specified date, on grounds of public policy, public security or public health in accordance with [regulation 27](#) of the [EEA Regulations 2016](#), as saved, irrespective of whether those Regulations apply to that person (except that in regulation 27 for "with a right of permanent residence under [regulation 15](#)" and "has a right of permanent residence under regulation 15" read "who meets the requirements of paragraph EU11 or EU12 of Appendix EU to the Immigration Rules" and for "an EEA decision" read "a decision under paragraph EU16(c) of Appendix EU to the Immigration Rules)", and it is proportionate to refuse the application

(bb) in respect of conduct after the specified date, where the Secretary of State deems the applicant's presence in the UK is not conducive to the public good

- EU16(d): it is proportionate to refuse the application where the applicant is a relevant excluded person (as defined in Annex 1 to Appendix EU) because of their conduct committed before the specified date and the Secretary of State is satisfied that the decision to refuse the application is justified on the grounds of public policy, public security or public health in accordance with regulation 27 of the EEA Regulations, irrespective of whether the EEA Regulations apply to that person (except that in regulation 27 for "with a right of permanent residence under regulation 15" and "has a right of permanent residence under regulation 15" read "who meets the requirements of paragraph EU11 or EU12 of Appendix EU to the Immigration Rules"; and for "an EEA decision" read "a decision under paragraph EU16(d) of Appendix EU to the Immigration Rules")
- EU16(e): the applicant is a relevant excluded person because of their conduct committed after the specified date

When considering whether to refuse on the basis of rule EU16(a), the decision-maker must examine whether the deception is material to the decision whether or not to grant the applicant indefinite leave to enter or remain or limited leave to enter

or remain under the EUSS. This is where the false or misleading information, representation or documentation concerns the applicant's ability to meet the requirements of Appendix EU. Where false information, representations or documents have been submitted, whether or not to the applicant's knowledge, and which are material to the decision whether or not to grant the applicant indefinite leave to enter or remain or limited leave to enter or remain under the EUSS, the decision-maker may refuse the application on the basis of rule EU16(a), provided that it is proportionate to do so.

When considering whether to refuse on the basis of rule EU16(b), the decision-maker may refuse the application only where it is proportionate to do so and the date of application under Appendix EU is before 1 July 2021.

A refusal on the basis of rule EU16(c) may only take place where the applicant has previously either:

- been refused admission under regulation 23(1) of the EEA Regulations 2016 as saved
- been refused admission to the UK under regulation 12(1)(a) of the Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020
- had previous leave granted under Appendix EU, or by virtue of having arrived in the UK with entry clearance granted under [Appendix EU \(Family Permit\)](#), which in either case was cancelled, either:
 - under [paragraph 321B\(b\)\(i\) or 321B\(b\)\(ii\) of the Immigration Rules](#)
 - under paragraph A3.1. or A3.2.(a) of Annex 3 to Appendix EU
 - under paragraph A3.3. or A3.4.(a) of Annex 3 to Appendix EU (Family Permit)

The decision under rule EU16(c) must be justified on grounds of public policy, public security or public health in accordance with the EEA Regulations 2016, as saved, and must only be made where it is proportionate to do so, unless the conduct took place after the specified date, in which case it must be justified on the grounds that the Secretary of State deems the applicant's presence in the UK is not conducive to the public good.

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

A 'relevant excluded person' is a person either:

- in respect of whom the Secretary of State has made a decision under Article 1F of the Refugee Convention to exclude the person from the Refugee Convention or under paragraph 339D of the Immigration Rules to exclude them from humanitarian protection
- in respect of whom the Secretary of State has previously made a decision that they are a person to whom Article 33(2) of the Refugee Convention applies because there are reasonable grounds for regarding them as a danger to the security of the UK

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

Where the applicant meets the definition of a ‘relevant excluded person’, under rule EU16(d), because of their conduct committed before the specified date, then refusing the application must additionally be proportionate and justified on the grounds of public policy, public security or public health in accordance with regulation 27 of the EEA Regulations 2016, as saved, irrespective of whether the EEA Regulations 2016, as saved, apply to that person (except that in regulation 27 for “with a right of permanent residence under regulation 15” and “has a right of permanent residence under regulation 15” read “who meets the requirements of paragraph EU11 or EU12 of Appendix EU to the Immigration Rules”; and for “an EEA decision” read “a decision under paragraph EU(16)(d) of Appendix EU to the Immigration Rules”).

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

Under rule EU17 the application must not be refused on the basis of an order or decision as specified in EU15 or EU16 which, at the date of decision on the application, has been set aside or revoked.

Related content

[Contents](#)

Related external links

[Appendix EU to the Immigration Rules](#)

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

[Directive 2004/38/EC](#)

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

Referral to Immigration Enforcement

This section tells you when an application under the EU Settlement Scheme is to be referred from Customer Service Group (CSG) (formerly UK Visas and Immigration) to Immigration Enforcement (IE).

Where the criteria set out below are met, CSG must refer the case to IE for a case-by-case consideration as to whether or not the individual in question ought to be deported or excluded.

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

For conduct committed either before or after 11:00pm on 31 December 2020:

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

For conduct committed after 11:00pm on 31 December 2020:

- the applicant has committed a serious harm offence which resulted in a non-custodial sentence

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

Existing deportation or exclusion order

Where the result of the check of the PNC, WI or immigration records indicates that the applicant is the subject of an existing UK deportation decision, deportation order, or exclusion order, CSG must refer the case to IE (or to Special Cases Unit) who, subject to the next paragraph, will refuse the application if it is a relevant decision or order as defined in Annex 1 to [Appendix EU](#) and consider whether it is appropriate to take enforcement action.

In accordance with regulation 32(5) of the EEA Regulations 2016, where a deportation order has been made by virtue of the EEA Regulations 2016, as saved, but the applicant has not been removed under that order during the two-year period beginning on the date on which the order was made, IE must consider whether there has been a material change of circumstances since the deportation order was made. If, following such an assessment, a decision is made that the removal continues to be justified on the grounds of public policy, public security or public health, the application under the scheme must be refused by IE.

Further guidance can be found at: Public policy, public security or public health decisions.

A case is not to be referred to IE where either:

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

Change in circumstances

A referral is required where there has been a change in circumstances since the previous decision not to pursue deportation including where:

- the applicant was under the age of 18 years at the time of sentencing and when a decision was made not to pursue deportation, but the applicant is now aged 18 or over
- at the time IE decided not to pursue deportation the applicant claimed they were British and either:
 - it has now been proved they are not
 - a court has found they were not entitled to British citizenship
 - British citizenship has been removed

Where an applicant has a past conviction or convictions which were not referred to the Home Office for deportation consideration under the policy in place at the time,

as set out in the list below, and who have not committed any further offence that meets the referral criteria, the application must be considered without referral to IE:

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

Overseas criminality

Where an applicant has declared previous overseas criminality, or a check of the PNC or WI indicates that an applicant has an overseas conviction, you may wish to make an overseas criminal record check.

Any request for an overseas criminal record check must first be approved by a senior caseworker. Whether an overseas criminal record check is required will depend on the facts of the case.

It may be necessary for that purpose to contact the applicant to obtain further information about their overseas conviction. An applicant may be contacted by telephone or in writing or invited to an interview to provide additional information in person.

Once all the relevant information regarding the overseas criminality has been established, the EUSS application must be progressed and referred to FNO RC (if suitability thresholds have been met).

Further guidance on how to conduct an overseas criminal record check can be found at: Criminal casework requests to ACRO for criminal activity checks abroad.

Where an applicant has an outstanding arrest warrant from an EU Member State or an Interpol alert, you must update the National Crime Agency (NCA) with the details of the applicant as provided on the application (address and contact details) and progress the case for consideration as to whether the applicant satisfies the eligibility criteria. If the person satisfies the validity, eligibility and suitability criteria leave must be granted accordingly. The NCA can independently progress the extradition or

arrest warrant as per their own operational processes. A grant of EUSS leave does not prejudice extradition proceedings.

Official – sensitive: start of section

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

Official – sensitive: end of section**Related content**[Contents](#)

Pending prosecutions

Criminal casework requests to ACRO for criminal activity checks abroad

Public policy, public security or public health decisions

Related external links

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

[Appendix EU to the Immigration Rules](#)

Consideration of EU15 and EU16

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

EU15(1)(a) – deportation

Where, at the date of decision on the application under the EU Settlement Scheme (EUSS), the applicant is subject to a deportation order or a decision to make a deportation order, as defined by Annex 1 to Appendix EU, Immigration Enforcement (IE) or Special Cases Unit (SCU) must refuse the application.

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

- (a) an order made under [section 5\(1\) of the Immigration Act 1971](#) by virtue of [regulation 32\(3\)](#) of the EEA Regulations 2016, as saved
- (b) an order made under [section 5\(1\) of the Immigration Act 1971](#) by virtue of section 3(5) or section 3(6) of that Act in respect of either:
 - (i) conduct committed after the specified date
 - (ii) conduct committed by the person before the specified date where the Secretary of State has decided that the deportation order is justified on the grounds of public policy, public security or public health in accordance with regulation 27 of the [EEA Regulations 2016](#), as saved, irrespective of whether those Regulations apply to the person (except that in regulation 27 for “with a right of permanent residence under regulation 15” and “has a right of permanent residence under regulation 15” read “who, but for the making of the deportation order, meets the requirements of paragraph EU11 or EU12 of Appendix EU to the Immigration Rules”; and for “an EEA decision” read “a deportation decision”)
- (c) an order made under section 5(1) of the Immigration Act 1971 by virtue of regulation 15(1)(b) of the Citizens’ Rights (Frontier Workers) (EU Exit) Regulations 2020

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

If the person is the subject of an existing deportation order made under section 5(1) of the Immigration Act 1971 in respect of conduct occurring prior to the end of the transition period, but that decision cannot be justified in accordance with regulation 27 of the EEA Regulations 2016, as applied by Appendix EU, and the person otherwise satisfies all other eligibility and suitability criteria, then the deportation order should be revoked so that EUSS leave can be granted (if the deportation order is not revoked any EUSS leave granted will be invalid under section 5(1) of the Immigration Act 1971).

If the person is the subject of a pending prosecution which may result in deportation action if they are convicted but no deportation decision has yet been taken, their EUSS application should be progressed and if all eligibility and suitability criteria are met, leave granted. If the individual is later convicted deportation action may then be considered as appropriate. Any EUSS leave granted will be invalidated by the making of the deportation order under section 5(1) Immigration Act 1971.

Guidance on considering whether to make a decision to deport under the [EEA Regulations 2016](#), as saved, is at: Public policy, public security or public health decisions.

Guidance on considering whether to make a decision to deport under UK law for conduct (and any convictions it relates to) committed after the specified date is at: Conducive deportation.

EU15(1)(b) – exclusion

Where, at the date of decision on the application under the EUSS, the applicant is subject to an exclusion order or exclusion decision, IE or SCU must refuse the application.

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

An **exclusion decision** means, as set out in Annex 1 to Appendix EU, a direction given by the Secretary of State that a person must be refused entry to the UK on the ground that that person's presence in the UK would not be conducive to the public good in respect of either:

- (a) conduct committed after the specified date
- (b) conduct committed by the person before the specified date, where the Secretary of State is satisfied that the direction is justified on the grounds of public policy, public security or public health in accordance with regulation 27 of the EEA Regulations 2016, as saved, irrespective of whether those Regulations apply to that person (except that in regulation 27 for "with a right of permanent residence under regulation 15" and "has a right of permanent residence under regulation 15" read "who, but for the making of the exclusion direction, meets the requirements of paragraph EU11 or EU12 of Appendix EU to the Immigration Rules"; and for "an EEA decision" read "an exclusion direction")

EU15(2) – presence in the UK not conducive to public good

Under rule EU15(2) an application made under Appendix EU will be refused on grounds of suitability where the Secretary of State deems the applicant's presence in the UK is not conducive to the public good because of conduct committed after the specified date.

Non-conducive to the public good means that it is undesirable to allow a person to remain in the UK, or admit a person to the UK, based on their character, conduct, or associations because they pose a threat to UK society. This applies to conduct both in the UK and overseas.

The test is intentionally broad in nature so that it can be applied proportionately on a case-by-case basis, depending on the nature of the behaviour and circumstances of the individual. What may be appropriate action in one scenario may not be appropriate in another. All decisions must be reasonable, proportionate and evidence-based.

A person's presence may be deemed to be non-conducive to the public good for a range of reasons, for example, because of criminality, reprehensible behaviour falling short of a conviction, or because their identity, travel history or other circumstances means that their presence in the UK poses a threat to UK society. A person does not need to have a criminal conviction to be refused admission on non-conducive grounds.

Guidance on considering whether to make a decision on the ground that the Secretary of State deems the applicant's presence in the UK is not conducive to the public good is at:

- Grounds for refusal: criminality
- Grounds for refusal: customs breaches
- Suitability: non-conducive grounds
- Suitability: sham marriage or civil partnership

EU15(3) – Islands deportation order

Where, at the date of decision on the application under the EUSS, the applicant is subject to an Islands deportation order, IE or SCU must refuse the application.

As set out in Annex 1 to [Appendix EU](#), an **Islands deportation order** means a deportation order as defined in paragraph 3(6) of Schedule 4 to the Immigration Act 1971 that was made:

- (a) in respect of conduct committed after the specified date and has effect in relation to the person, by virtue of paragraph 3 of Schedule 4 to the Immigration Act 1971, as if it was a deportation order made under that Act
- (b) in respect of conduct committed by the person before the specified date, where the Secretary of State is satisfied that the order is justified on the grounds of public policy, public security or public health in accordance with regulation 27 of the EEA Regulations, irrespective of whether the EEA Regulations apply to the person (except that in regulation 27 for "with a right of permanent residence under regulation 15" and "has a right of permanent residence under regulation 15" read "who, but for the making of the deportation order, meets the requirements of paragraph EU11 or EU12 of Appendix EU to the Immigration Rules"; and for "an EEA decision" read "a deportation decision")

EU15(4) – Islands exclusion decision

Where, at the date of decision on the application under the EUSS, the applicant is subject to an Islands exclusion decision, IE or SCU may refuse the application.

An **Islands exclusion decision** means, as set out in Annex 1 to Appendix EU, a direction given by the relevant Minister or other authority in the Islands that a person must be excluded from the Island concerned in respect of either:

- a) conduct committed after the specified date
- b) conduct committed by the person before the specified date, where the Secretary of State is satisfied that the direction is justified on the grounds of public policy, public security or public health in accordance with regulation 27 of the EEA Regulations, irrespective of whether the EEA Regulations apply to the person (except that in regulation 27 for “with a right of permanent residence under regulation 15” and “has a right of permanent residence under regulation 15” read “who, but for the making of the exclusion direction, meets the requirements of paragraph EU11 or EU12 of Appendix EU to the Immigration Rules”; and for “an EEA decision” read “an exclusion decision”)

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EU16(a) – false or misleading information or evidence

Rule EU16(a) of [Appendix EU](#) is a discretionary provision. It provides that where, in relation to the application and whether or not to the applicant’s knowledge, false or misleading information, representations or documents have been submitted (including false or misleading information submitted to any person to obtain a document used in support of the application), which is or are material to the decision whether or not to grant the applicant indefinite leave to enter or remain or limited leave to enter or remain under Appendix EU, you may refuse the application, provided that it is proportionate to do so.

‘False or misleading information, representations or documents’ means information, representations or documents provided with the intention to deceive. This might have been, for example, in the application, in supporting documents or verbally at an interview conducted under Annex 2 to Appendix EU for the purpose of deciding whether the applicant meets the eligibility requirements for indefinite leave to enter or remain or for limited leave to enter or remain under Appendix EU.

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

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

A false document includes:

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

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You must not refuse an application on the basis of false or misleading information, representations or documents, or of non-disclosure of material facts, unless you are satisfied that dishonesty or deception is involved. The requirement for false or misleading information, representations or documents to be deliberately and dishonestly given or made is derived from the ruling in [AA \(Nigeria\) v SSHD \[2010\] EWCA Civ 773](#), which found that the interpretation of 'false' requires deliberate dishonesty or deception to be used in an application although not necessarily by the applicant.

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

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

When deciding whether to refuse on the basis of rule EU16(a), you must have evidence to show, on the balance of probabilities, that the applicant or a third party has provided [false or misleading information, representations or documents](#), which is material to the decision whether or not to grant the applicant indefinite leave to enter or remain or limited leave to enter or remain under [Appendix EU](#). The burden of proof is on the applicant to show that they meet the requirements of the Rules. However, if you allege false or misleading information, representations or documents, the burden of proof is on the Home Office to show both that they are not true and that there is dishonesty or deception involved.

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

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

You must not refuse an application under rule EU16(a) where there has been a genuine error by the applicant or a third party, as this would not constitute deliberate dishonesty or deception and would not be proportionate. If the information or evidence provided is incorrect but there is insufficient evidence of dishonesty or deception, the application must be considered for refusal on eligibility grounds as the incorrect information or evidence may mean that the applicant does not meet the requirements of the Rules and ought to be refused on eligibility grounds.

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

Material to the decision

When assessing whether to refuse the application under rule EU16(a), you must consider whether the false or misleading information, representation or documentation is material to the decision whether or not to grant the applicant indefinite leave to enter or remain or limited leave to enter or remain under [Appendix EU](#). It is material if the false or misleading information, representation or documentation affects the applicant's ability to meet the requirements of Appendix

EU because discounting that information, representation or documentation means that the applicant is either not eligible for leave under Appendix EU or eligible for limited leave to enter or remain rather than indefinite leave to enter or remain.

If the false or misleading information, representation or documentation relates to continuity of residence in the UK, family relationship or the applicant's ability to meet other criteria set out in rule EU11, EU12 or EU14 of Appendix EU, the application may also fall to be refused on eligibility grounds. If so, the decision letter must also address these.

Proportionality

When considering whether to refuse an application on the basis of rule EU16(a), you must also consider whether that refusal would be proportionate, in light of all the known circumstances of the case. Factors to consider in assessing the proportionality of your decision include:

- the seriousness of the dishonesty or deception
- whether the applicant knew about the dishonesty or deception
- the impact on the applicant and their family member or members, in particular any children under the age of 18, of a refusal decision under the EUSS
- the applicant's response to the notification in writing given to them (in any case where you are thinking of refusing the application based on false or misleading information, representations or documents) setting out exactly what the allegation is in this regard

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EU16(b) – removal decision

Rule EU16(b) of [Appendix EU](#) is a discretionary provision. It provides that where, at the date of decision on the application under the EUSS, the applicant is subject to a removal decision under [regulation 23](#) of the [EEA Regulations 2016](#), as saved, on the grounds of their non-exercise or misuse of rights, and the date of application under Appendix EU is before 1 July 2021 you may refuse the application where it is proportionate to do so in the particular circumstances of the case.

If the applicant is already being considered for removal in accordance with the [EEA Regulations 2016](#), as saved, grounds of their non-exercise or misuse of rights, that consideration must be concluded before any decision is made on their application under the EUSS.

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

An applicant must not be referred to IE for consideration of the making of a removal decision under the [EEA Regulations 2016](#), as saved, on the grounds of their non-exercise or misuse of rights under [Directive 2004/38/EC](#), or refused on grounds of suitability under paragraph EU16(b) of Appendix EU, without consultation with a senior caseworker, who must consult the European Migration & Citizens' Rights Unit.

EU16(c) – previous refusal of admission or cancellation of EUSS status

Rule EU16(c) is a discretionary provision and provides for the refusal of an application where, at the date of the decision, the applicant has previously either:

- been refused admission under [regulation 23 \(1\) of the EEA Regulations 2016](#), as saved
- been refused admission to the UK under regulation 12(1)(a) of the Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020
- had leave that was granted under Appendix EU (or by virtue of having arrived in the UK with an entry clearance granted under Appendix EU (Family Permit)) cancelled, either:
 - [under paragraph 321B\(b\)\(i\) or 321B\(b\)\(ii\) of the Immigration Rules](#)
 - under paragraph A3.1. or A3.2(a) of Annex 3 to Appendix EU
 - under paragraph A3.3. or A3.4.(a) of Annex 3 to Appendix EU (Family Permit)

A refusal made under rule EU16(c) must be justified on grounds of public policy, public security or public health in accordance with regulation 27 of the EEA Regulations 2016, as saved, irrespective of whether they apply to the person, and must only be made where it is proportionate to do so (taking into account the particular circumstances and facts of the case at the date of decision), unless the conduct took place after the specified date, in which case it must be justified on the grounds that the Secretary of State deems the applicant's presence in the UK is not conducive to the public good.

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

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

Rule EU16(d) applies where a person is a 'relevant excluded person' because of their conduct committed before the specified date. Under rule EU16(d), an application can only be refused where, additionally, refusing the application is justified on the grounds of public policy, public security or public health.

Rule EU16(e) applies where a person is a 'relevant excluded person' because of their conduct committed after the specified date.

A 'relevant excluded person' (as per the definition in Annex 1 to Appendix EU) means a person either:

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

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

EU16(d): conduct committed before the specified date

A refusal on the basis of rule EU16(d) may only be made where the applicant meets the definition of 'relevant excluded person' because of their conduct committed before the specified date, and where the decision to refuse is justified on grounds of public policy, public security or public health in accordance with regulation 27 of the EEA Regulations 2016, irrespective of whether the EEA Regulations 2016 apply to that person (except that in regulation 27 for "with a right of permanent residence under regulation 15" and "has a right of permanent residence under regulation 15" read "who meets the requirements of paragraph EU11 or EU12 of Appendix EU to the Immigration Rules"; and for "an EEA decision" read "a decision under paragraph EU16(d) of Appendix EU to the Immigration Rules"). In addition, an application may only be refused under rule EU16(d) where doing so is proportionate taking into account the particular circumstances of the case.

See Public policy, public security or public health decisions.

EU16(e): conduct committed after the specified date

A refusal on the basis of rule EU16(e) may only be made where the applicant meets the definition of 'relevant excluded person' because of conduct committed after the specified date.

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[Withdrawal Agreement](#)

[Directive 2004/38/EC](#)

[Immigration Act 1971](#)

[UK Borders Act 2007](#)

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

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

Pending prosecutions

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

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

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

The fact that an applicant has a pending prosecution does not prevent caseworkers from progressing the application as set out above. If the applicant satisfies the eligibility criteria and suitability criteria (setting aside the allegations which are the subject of the pending prosecution) leave may be granted. If the applicant does not satisfy the eligibility criteria and suitability criteria (setting aside the allegations which are the subject of the pending prosecution) leave should be refused. If the applicant is subsequently convicted and given a custodial sentence, the case will be referred to FNO RC through the usual prison referral mechanism. Should FNO RC pursue deportation, a deportation order will invalidate any EUSS leave held under section 5(1) of the Immigration Act 1971.

Related content

[Contents](#)

Decision to refuse on suitability grounds

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

The application will fall for refusal if you are satisfied that any of the criteria in rule EU15(1) of [Appendix EU](#) are met.

The application will fall for refusal if you are satisfied that the criteria in rule EU15(2) of [Appendix EU](#) are met.

The application will fall for refusal if you are satisfied that the criteria in rule EU15(3) of [Appendix EU](#) are met.

The application may fall for refusal if you are satisfied that any of the criteria in rule EU15(4) or EU16 of [Appendix EU](#) are met.

Where an application falls to be refused under rule EU15(1) on the basis that the applicant is subject to a deportation order, exclusion order or exclusion decision made under the [European Economic Area \(EEA\) Regulations 2016](#), as saved, it is not necessary to set out the reasons for the earlier decision. The EU Settlement Scheme (EUSS) decision letter must refer to the letter communicating the earlier order or decision to the applicant.

Where a person is subject to a deportation order or exclusion decision made on the ground it is conducive to the public good in respect of conduct committed before 11:00pm GMT on 31 December 2020, you must consider whether this conduct meets the public policy, public security or public health test when considering the EUSS application. If that test is met, then the EUSS application must be refused on suitability grounds under rule EU15(1) using ICD.5252 B. There is no need to reconsider the deportation decision on public policy, public security or public health grounds. The deportation order must be maintained.

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Where an application falls to be refused under rule EU16(a) where false or misleading information, representations or documents have been submitted and this is material to the decision whether or not to grant leave; or under EU16(b) where the applicant is subject to a removal decision under the EEA Regulations 2016 on the grounds of their non-exercise or misuse of rights, and the date of application under

Appendix EU is before 1 July 2021, consideration must be given as to whether the decision is proportionate having regard to the person's specific circumstances.

Where an applicant falls to be refused under rule EU16(c) on the basis that, at the date of decision, they have previously either:

- been refused admission under regulation 23(1) of the EEA Regulations 2016 (as saved)
- been refused admission to the UK under regulation 12(1)(a) of the Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020
- had leave that was granted under Appendix EU (or by virtue of having arrived in the UK with an entry clearance granted under Appendix EU (Family Permit)) cancelled, either:
 - [under paragraph 321B\(b\)\(i\) or 321B\(b\)\(ii\) of the Immigration Rules](#)
 - under paragraph A3.1. or A3.2.(a) of Annex 3 to Appendix EU
 - under paragraph A3.3. or A3.4(a) of Annex 3 to Appendix EU (Family Permit)

and the refusal of the application is justified in respect of the applicant's conduct committed before the specified date, the decision letter must explain why the public policy, public security and public health test is met and why the decision is considered proportionate having regard to the person's specific circumstances. Where the refusal of the application is justified in respect of conduct committed after the specified date, the decision letter must explain why it is justified on the grounds that the Secretary of State deems the applicant's presence in the UK is not conducive to the public good.

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

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Public policy and public security decisions

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[Appendix EU to the Immigration Rules](#)

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

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

Decision to cancel, curtail or revoke leave to enter or remain granted under Appendix EU

This section tells you how to make a decision to cancel, curtail or revoke leave to enter or remain granted under Appendix EU.

In all cases, the applicant must be given reasons for the decision by reference to the criteria in Annex 3 to Appendix EU.

Cancellation, curtailment and revocation of leave to enter or remain granted under Appendix EU

Annex 3 to the Appendix EU applies in respect of the cancellation, curtailment and revocation of leave to enter or remain granted under Appendix EU.

Cancellation of indefinite or limited leave to enter or remain granted under Appendix EU

Rule A3.1. provides that a person's indefinite leave to enter or remain or limited leave to enter or remain granted under Appendix EU must be cancelled on or before their arrival in the UK where the Secretary of State or an Immigration Officer deems the person's presence in the UK is not conducive to the public good because of conduct committed after the specified date.

Rule A3.2. provides that a person's indefinite or limited leave to enter or remain granted under Appendix EU may be cancelled on or before their arrival in the UK where the Secretary of State or an Immigration Officer is satisfied that it is proportionate to cancel that leave where:

- (a) the cancellation is justified on grounds of public policy, public security or public health in accordance with regulation 27 of the Immigration (European Economic Area) Regulations 2016, irrespective of whether the EEA Regulations apply to that person (except that for "a right of permanent residence under regulation 15" read "indefinite leave to enter or remain or who would be granted indefinite leave to enter or remain if they made a valid application under this Appendix"; and for "an EEA decision" read "a decision under paragraph A3.2.(a) of Annex 3 to Appendix EU to the Immigration Rules"). See Public policy, public security or public health decisions for guidance
- (b) the cancellation is justified on grounds that, in relation to the relevant application under Appendix EU, and whether or not to the applicant's knowledge, false or misleading information, representations or documents were submitted (including false or misleading information submitted to any

person to obtain a document used in support of the application); and the information, representation or documentation was material to the decision to grant the applicant leave to enter or remain under Appendix EU – see [EU16\(a\) – false or misleading information or evidence](#) for guidance

Cancellation of limited leave to enter or remain granted under Appendix EU

Rule A3.3. provides that a person’s limited leave to enter or remain granted under Appendix EU may be cancelled on or before their arrival in the UK where the Secretary of State or an Immigration Officer is satisfied that it is proportionate to cancel that leave where they cease to meet the requirements of Appendix EU.

Curtailment of limited leave to enter or remain of leave granted under Appendix EU

Rule A3.4. provides that a person’s limited leave to enter or remain granted under Appendix EU may be curtailed where the Secretary of State is satisfied that it is proportionate to curtail that leave where:

- (a) curtailment is justified on grounds that, in relation to the relevant application under Appendix EU, and whether or not to the applicant’s knowledge, false or misleading information, representations or documents were submitted (including false or misleading information submitted to any person to obtain a document used in support of the application); and the information, representation or documentation was material to the decision to grant the applicant leave to enter or remain under Appendix EU – see [EU16\(a\) – false or misleading information or evidence](#) for guidance
- (b) curtailment is justified on grounds that it is more likely than not that, after the specified date, the person has entered, attempted to enter or assisted another person to enter or to attempt to enter, a marriage, civil partnership or durable partnership of convenience – see: marriage investigations: removal pathways for detail on curtailment of leave prior to removal action in sham marriage cases
- (c) the person ceases to meet, or never met, the requirements of Appendix EU

Revocation of indefinite leave to enter or remain granted under Appendix EU

The power to revoke indefinite leave to enter and remain is provided by section 76 of the Nationality, Immigration and Asylum Act 2002. The relevant provisions, sections 76(1) and 76(2), are reflected in Annex 3 to Appendix EU.

Rule A3.5. provides that a person’s indefinite leave to enter or remain granted under Appendix EU may be revoked where the Secretary of State is satisfied that it is proportionate to revoke that leave where either:

- (a) the person is liable to deportation, but cannot be deported for legal reasons
- (b) the indefinite leave to enter or remain was obtained by deception

Further guidance is available at: Revocation of indefinite leave.

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[Appendix EU to the Immigration Rules](#)

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

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

[Section 76 of the Nationality, Immigration and Asylum Act 2002](#)

Withdrawal of EUSS application

There may be occasions when a person wishes to withdraw their application under the EU Settlement Scheme (EUSS). This may be where they have been encountered and express a desire to return home or be deported as soon as possible, as the application can be withdrawn more quickly than it can be refused, therefore reducing time in detention.

The applicant will need to sign a disclaimer indicating their wish to withdraw their EUSS application. The disclaimer needs to be brief, clear and bespoke. A stock deportation disclaimer will not be sufficient, as it specifically needs to refer to the EUSS application that is being withdrawn.

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Public policy, public security or public health decisions

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

Appeals

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

Right of Appeal

Anyone who makes a valid application under Appendix EU after 11:00pm on 31 January 2020 will have a right of appeal under the [Immigration \(Citizens' Rights Appeals\) \(EU Exit\) Regulations 2020](#) against a decision to refuse their application on eligibility or suitability grounds, or to grant pre-settled status where they believe they qualify for settled status.

Anyone who made a valid application under Appendix EU before 11:00pm on 31 January 2020 will have a right of appeal where they are refused or where they are granted pre-settled status and believe they qualify for settled status, where the decision is made on their application on or after 8 May 2023. There is also a right of appeal against decisions to curtail or cancel pre-settled status or cancel or revoke settled status.

They may appeal on grounds that the decision:

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

All appeals under the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020 will suspend removal, unless the relevant appealable decision is either:

- certified under regulation 16
- certified as having been made in the interests of national security under Schedule 1 and is appealable from out of country, in accordance with regulation 15
- certified under regulation 16A on the grounds of abuse of rights or fraud

When a deportation decision is certified under [regulation 33](#) of the [EEA Regulations 2016](#), as saved, the EUSS application may be certified under regulation 16 of the Immigration (Citizens' Rights) (EU Exit) Regulations 2020.

Further guidance is available in the Rights of Appeal guidance and Regulation 33 and 41 guidance.

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Rights of Appeal

Regulation 33 and 41

Related external links

[Immigration \(Citizens' Rights Appeals\) \(EU Exit\) Regulations 2020](#)