Home Office

EEA nationals: refusal of admission

Version 3.0

This guidance explains how to refuse admission for European Economic Area (EEA) nationals and their dependants.

Contents

About this guidance

This guidance tells Border Force officers about refusing admission to European Economic Area (EEA) nationals and their dependants.

All the content of this guidance is classified as official – sensitive and must not be disclosed outside of the Home Office.

Contacts

If you have any questions about the guidance and a Higher or Senior officer cannot help you or you think that the guidance has factual errors then email Border Force national immigration and customs enquiries (BF NICE).

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.

Clearance

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

- version 3.0
- published for Home Office staff on 16 February 2017

Changes from last version of this guidance

New refusal formula:019 administrative removal – misuse of rights amended to reflect the updated Immigration (European Economic Area) Regulations 2016 changes.

Related content

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EEA legislation

This page tells Border Force officers about the relevant legislation relating to the refusal of European Economic Area (EEA) nationals and their dependants.

All the content of this guidance is classified as official – sensitive and must not be disclosed outside of the Home Office.

Regulation 11(1) of the Immigration (European Economic Area) Regulations 2016 (the EEA Regulations 2016) states that an **EEA national** must be admitted to the UK on production of a valid national ID card or passport issued by an EEA Member State, subject to public policy, public health and public security and the abuse of rights and fraud provisions. An EEA national can only be refused admission and removed on these grounds. This includes EEA nationals who are being deported or who are the subject of an extant deportation order on arrival.

Regulation 11(2)(b) states that a non-EEA national who is the family member of an EEA national, or a family member who has retained a right of residence, or a person who has a derivative right of residence in the UK must be admitted to the UK on production of a valid passport and either a family permit, a derivative residence card or a permanent residence card issued by the UK.

Regulation 11(2)(a) states that a non-EEA national family member of an EEA national must be admitted to the UK on production of a valid passport and a qualifying EEA state residence card where the following conditions are met:

> "(a) they are accompanying or joining the EEA national in the UK, and
> (b) the EEA national has a right to reside in the UK under the EEA Regulations"

A qualifying EEA Member State residence card is a 'residence card of a family member of a Union citizen' issued by an EEA Member State under Article 10 of Directive 2004/38/EC (the Free Movement Directive) to the family member of an EEA national who is exercising free movement rights in that member state. Permanent residence cards issued under Article 20 of the directive are also acceptable. For further information on Article 10 residence cards, see the EEA nationals and their dependents guidance' <internal link redacted>.

A family member **can** be refused admission in accordance with regulation 23(1) on grounds of public policy, public security or public health **or** if they are not accompanying or joining an EEA national who has a right to reside under EEA Regulations 2016 (regulation 23(4).

Referral to BF national immigration and customs enquiries (BF NICE) should **only** be made after seeking advice from a Border Force Senior Officer in particularly complex or contentious cases that cannot be resolved locally or are likely to arouse press or public interest.

Related content

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EEA nationals without a valid ID card or passport

This page tells Border Force officers about the relevant legislation relating to the refusal of European Economic Area (EEA) nationals and their dependants.

All the content of this guidance is classified as official – sensitive and must not be disclosed outside of the Home Office.

Unable to produce a document

Regulation 11(4) states that when an EEA national does not produce on arrival a valid ID card or passport they should be given 'every reasonable opportunity' to prove by other means that they are an EEA national. In other words they should **not** automatically be refused admission as a result of being unable to produce a valid ID card or passport.

Passengers who have forgotten or lost their documents will usually be willing to produce other documents or information to substantiate their claim, and observation and a short conversation are usually enough to make a reasonable judgement.

Where a person who has been given ample opportunity to prove that he is an EEA national fails to do so, they may be refused admission under regulation 11(4).

Unwilling to produce a document

You should make an assessment of whether or not the passenger is likely to be an EEA national. Such passengers should not be allowed to proceed until you are satisfied that they are a genuine EEA national.

Passengers presenting forged or counterfeit EEA documents

Non-EEA national passengers who are only able to produce forged or counterfeit EEA documents (including EEA family permits, residence cards, derivative residence card, permanent residence cards or a qualifying EEA member state residence card (an Article 10 residence card (or Article 20 permanent residence card) issued by another EEA member state in line with the Free Movement Directive) should be considered under the relevant part(s) of the Immigration Rules, such as Paragraph 320(3).

Passengers claiming to be EEA nationals who are only able to produce forged or counterfeit EEA documents (such as a national ID card or passport) should be refused admission under regulation 11(1).

Related content

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Non-EEA family members of EEA nationals

This page tells Border Force officers about the refusal of dependants of European Economic Area (EEA) nationals.

All the content of this guidance is classified as official – sensitive and must not be disclosed outside of the Home Office.

EEA family permit holders

If they are joining the EEA national (rather than accompanying them) the **onus is on the passenger** to prove that the EEA national is in the UK.

Regulation 20 gives power to revoke family permits on grounds of public policy, health and security **or** if the person is no longer the family member of an EEA national **or** the family member is refused admission because he is not accompanying or joining an EEA national who has a right to reside under the EEA Regulations.

However, as such persons are entitled to an **in country right of appeal**, ports should not physically cancel the permit until all appeal rights are exhausted.

EEA family permit holders not accompanying or joining an EEA national

<redacted>

In all other cases the person should be refused admission.

Visa national EEA family permit holders who seek admission as visitors

In some circumstances it will be necessary to treat under the rules an EEA family permit holder who is a visa national and who is neither accompanying nor joining the EEA national. <redacted>

Refusal in these circumstances would be under paragraph 320(5) of HC 395 and **would not attract** an appeal.

Where the passenger makes reference to the EEA family permit or to their rights as a family member the case must be refused under EEA Regulations 2016 with an in country right of appeal.

Related content

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EEA nationals: revocation of admission

This page tells Border Force officers about the revocation of admission for European Economic Area (EEA) nationals and their dependants.

All the content of this guidance is classified as official – sensitive and must not be disclosed outside of the Home Office.

Regulation 31 of the EEA Regulations 2016 allows Border Force officers to revoke admission of a person who has been admitted to the UK under regulation 11.

This power of revocation applies if the person is located within 24 hours of being granted admission.

<redacted>

This power may also be applied in cases where the person has been admitted but where information comes to light following admission, which means that the person would have been refused admission under regulation 23(1) if that information had been available at the point of admission.

<redacted>

You can only detain a person if they are subject to:

- further examination
- removal directions

Therefore you must revoke their admission to the UK before you can detain them. A person who has had their admission to the UK revoked pursuant to regulation 31 is to be treated as a person who has been refused admission under regulation30.

If you do not locate the person within 24 hours, you cannot revoke their admission to the UK, but Immigration Enforcement can consider removal on public policy grounds.

<redacted>

Related content
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EEA nationals: refusal of admission on grounds of public policy, public security and public health

This page tells Border Force officers about refusal of admission for European Economic Area (EEA) nationals and their dependants on the grounds of public policy, health and security.

All the content of this guidance is classified as official – sensitive and must not be disclosed outside of the Home Office.

Regulation 23(1) sets out that a Border Force officer may refuse admission to an EEA national or their family members on the grounds of public policy or public security in accordance with regulation 27.

You must also refuse entry to an individual who is subject to a valid deportation order or exclusion order (regulation 23(2)) unless they are seeking to be admitted temporarily for an appeal hearing and have permission to do so. Where an individual is not subject to a deportation order or exclusion order you will need to consider whether there are public policy or public security reasons for refusing admission to the UK.

If a decision is made to refuse entry to an EEA national on grounds of public policy or public security, the individual's passport must not be endorsed.

Consideration must be given to levels of protection against a public policy or public security decision and regulation 27(5) when deciding whether to refuse admission.

Once a person has passed through immigration control, they are considered to have been admitted to the UK (unless they entered in contravention of a deportation order or exclusion order or were not entitled to be admitted under regulation 23(1) or (3)). If they are stopped by another agency (for example the police) and a decision is made to deport the individual, there is no need to make a separate decision to refuse admission to the UK.

A decision to grant admission to an EEA national or their family member does not necessarily preclude a decision from being made on public policy or public security grounds at a later date. For example, just because a decision to allow admission to the UK has been made does not automatically prevent a deportation decision from being made against that individual.

Public policy and security

Decisions taken on grounds of public policy and public security **must** take account of the following principles as set out in regulation 27 of the EEA Regulations 2016:

- the decision must comply with the principle of proportionality

- the decision must be based exclusively on the personal conduct of the person concerned
- the personal conduct of the individual concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society, taking into account past conduct of the individual and that the threat does not need to be imminent
- matters isolated from the particulars of the case or which relate to considerations of general prevention do not justify the decision
- the individual's previous criminal convictions do not in themselves justify the decision
- the decision may be taken on preventative grounds, even in the absence of a previous criminal conviction, provided the grounds are specific to the person

Further guidance on the application of the six principles is set out below:

Principle of proportionality

The decision must comply with the principle of proportionality. This means that the decision to refuse admission must be necessary and appropriate to protect the fundamental interests of society that are threatened.

Personal conduct of the person concerned

A decision on grounds of public policy or public security must only be taken with regard to the conduct of the person.

This means that an individual's circumstances must be assessed on a case-by-case basis taking account of any available evidence. It is not necessary for an individual to have criminal convictions for a decision to be made on public policy or public security grounds, if their personal conduct is assessed to be a threat and the other requirements of regulation 27 are met.

<redacted>

Genuine, present and sufficiently serious threat affecting one of the fundamental interests of society, taking into account past conduct of the person and the threat does not need to be imminent

The threat they pose must be a genuine, present and sufficiently serious one affecting one of the fundamental interests of society. These factors are considered in turn below.

Genuine: the threat must be a realistic one.

Present: the threat must exist but it does not need to be imminent. An indication of a present threat may include intelligence or any precautionary measures which have been imposed on the individual (such as licence conditions, as such conditions are imposed on the basis that there is a genuine and present risk, which requires a condition to be imposed). Even a low risk can constitute a present threat, especially where the consequences of any offence could be serious. An argument by the

individual that they pose a low risk of offending should not be determined automatically in their favour when making a public policy decision. For the purpose of determining whether a person is a present threat while they are detained, the fact that they are detained should not be taken into account. The threat does not need to be imminent at the point of release.

Sufficiently serious: the threat must be serious enough to affect one of the fundamental interests of society but does not need to be a serious threat.

It is also not necessary to demonstrate that an individual is likely to commit a specific type of offence.

When considering whether an individual poses a threat, you may also consider the following factors.

Nature of the offence: in deportation cases the government's view is that certain types of offences weigh in favour of deportation. Those offences typically result in a custodial sentence or a requirement to sign the Violent and Sex Offender's Register (ViSOR). This includes violent, sexual, gun and drug-related offences.

Length of sentence: in most cases, the length of sentence will provide a strong indication of the severity of the offence, although each case must be considered on its individual merits. A period of imprisonment, especially a life sentence with a particularly long tariff is confirmation from the sentencing court as to the danger posed by the individual. Where the individual is held as the highest category of prisoner (a position which is reviewed annually) and assessments of their risk are such that the person requires the most secure accommodation on the prison estate, this is on the basis of the risk posed to society if they escaped.

Rehabilitation: the duration of any rehabilitative efforts will be relevant to the public policy decision. Where such efforts are in their infancy (i.e. a few weeks in the community, or a few sessions undertaken) these should not be considered to be determinative of the question of a risk of re-offending. Where an individual relies on rehabilitative prospects in their country of origin compared to the UK, any differences in rehabilitative provisions will be minor, unless there is strong evidence to the contrary.

Schedule 1 of the EEA Regulations 2016 provides a non-exhaustive list of examples of the fundamental interests of society. For further guidance on examples of behaviour contrary to the fundamental interests of society see: Fundamental Interests

Matters isolated from the particulars of the case or which relate to considerations of general prevention do not justify the decision

Decisions must be made on a case-by-case basis, based on a consideration of the facts and circumstances of the individual case.

Previous criminal convictions do not in themselves justify the decision

A decision made on public policy or public security grounds cannot be made on criminal convictions alone. You must also take into account all the principles of regulation 27(5). The nature of previous offending including the number and seriousness of previous convictions should form part of the assessment of the person's present conduct when considering the overall conduct of the person concerned. You should take account of any available evidence, including self-declared criminality.

However, it is not necessary for a person to have any previous criminal convictions for a decision to be made on public policy or public security grounds. For example cautions and warnings can also be taken into account.

The decision may be taken on preventative grounds, even in the absence of a previous criminal conviction, provided the grounds are specific to the person

A decision may be made on public policy or public security grounds to prevent the specific individual from carrying out certain, specific types of conduct. This is particularly important in the national security context, where there is reliable intelligence to suggest that a Union citizen or their family member may pose a threat to public security.

Additional considerations for a person resident in the UK

Under regulation 27(6) additional considerations must be taken into account where the person is resident in the UK. This includes where the person is temporarily outside the UK when the decision is made, for example, when an exclusion order is made.

These considerations do not apply to an application for an EEA family permit where the applicant is applying from overseas, to a decision about whether a person should be admitted to the UK, or to a decision about whether a person should be excluded from the UK (unless they are resident).

Age

This has greater significance where for instance the person is under the age of 18, and consideration must be given to their best interests.

State of health

A person's general state of health, including their physical and mental health, must be considered and, in particular, the implications of the proposed decision on that person's health. Where claims of ill-health are made, it is expected that they would be substantiated by medical evidence from medical professionals with relevant qualifications and experience. Original documentary evidence from official or independent sources will be given more weight in the decision-making process than photocopies or unsubstantiated assertions.

Family and economic situation

Consideration must be given to factors such as whether the person has dependants in the UK, such as children, or whether they are financially or physically dependent on others already legally residing within the UK.

Length of residence
Generally, the shorter the length of residence, the less likely a person will have established significant links to the UK and the easier they will be able to integrate into the country of return. This includes those who have not resided in the UK for a continuous period of five years and therefore have not acquired a permanent right of residence and in some cases those who have lived in the UK for less time than they lived in their member state of origin.

Other considerations may include for example, whether the person may have had a relatively long period of residence without any history of abuse of immigration laws, criminality, any time spent in prison.

Social and cultural integration.
This looks at the degree of the person's integration in the UK. This could include links to family and friends, length of residence, properties or business interests in UK as well as any absences from the UK, length and frequency of those absences and whether the person's personal, family or occupational interests have moved to another country.

You will need to balance all circumstances to form an overall assessment of whether a person is socially and culturally integrated in the UK. You must consider the information available, including all the reasons put forward by the individual about their social and cultural integration in the UK in order to make an assessment in an individual case. Paragraphs 2 to 6 of schedule 1 set out the considerations which the court or Tribunal must take into account when looking at whether there are public policy or public security grounds in an individual case.

Mere presence in the UK is not evidence of integration. The person subject to a public policy or public security decision will need to show a wider degree of cultural and societal integration to be regarded as integrated in the UK. Where the individual is only able to show links with their family members, or with others of the same nationality, or who speak the same language, this alone will not be sufficient to demonstrate integration in the UK.

Criminal offending is an indication of a lack of integration. Where a custodial sentence is received, the longer the sentence, or in the case of a persistent offender, the more convictions, the greater the likelihood that the person is not integrated. The nature of offending, such as anti-social behaviour against a local community or offending that may have caused a serious or long-term impact on a victim or victims (e.g. sexual assault, burglary) may be further evidence of non-integration.

Integrating links which are formed at or around the same time as an individual has been carrying out the offending behaviour, was otherwise acting in a way which affects the fundamental interests of society, or whilst the individual was in custody are less likely to indicate integration. Whilst positive contributions to society may be evidence of integration, this will not weigh strongly in the individual's favour if it was

undertaken at such a time to suggest an attempt to avoid deportation. If such a claim is made, the individual is expected to provide credible evidence of their contribution. Less weight will usually be given to claims unsubstantiated by original, independent and verifiable documentary evidence.

Imprisonment prevents integrating links from being formed, and less weight will be attached to claimed integrating links formed during time in prison (such as work carried out in prison, or training courses). Imprisonment does not allow an individual to become an integral part of society, and the person has been deprived of their freedom due to their personal decision to breach societal norms, and engage in conduct which is contrary to positive engagement with the UK.

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Fundamental interests of society

This page sets out details of what constitutes the fundamental interests of society in the United Kingdom as set out in schedule 1 of the European Economic Area (EEA) Regulations 2016 and provides examples of the types of behaviour that are contrary to those interests.

Schedule 1 of the EEA Regulations 2016 provides a non-exhaustive list of the fundamental interests of society in the UK. Consideration must be given to the fundamental interests of society to determine whether it is appropriate to restrict a person's free movement rights on the grounds of public policy and public security. A list of the types of behaviour considered contrary to each fundamental interest of society is set out below with examples provided where helpful and is further expanded upon in Behaviour which may lead to a public policy decision. This is a non-exhaustive list. In some cases the behaviour may be contrary to more than one fundamental interest.

When making a decision to refuse admission, you must list all the relevant fundamental interests which apply in the refusal letter.

The fundamental interests of society include:

(a) preventing unlawful immigration and abuse of the immigration laws, and maintaining the integrity and effectiveness of the immigration control system (including under these regulations) and of the Common Travel Area

Examples of behaviour contrary to this interest include:

- marriages of convenience or durable partnership of convenience
- human trafficking
- use of fraudulent documents
- facilitating illegal entry to the UK
- circumventing the immigration system
- facilitating the circumvention of the immigration system

(b) maintaining public order

Examples of behaviour contrary to this interest include:

- inciting public disorder
- anti-social behaviour such as criminal damage, rough sleeping, drug offences and offences committed to fund a drug or alcohol habit, or committed while under the influence of drugs or alcohol

(c) preventing social harm

Examples of behaviour contrary to this interest include:

- low-level criminality

- acquisitive crime including theft and shoplifting

(d) preventing the evasion of tax and duties

Examples of behaviour contrary to this interest include:

- tobacco or alcohol smuggling
- tax fraud
- non-payment of taxes or duties owed

(e) protecting public services

Examples of behaviour contrary to this interest include:

- benefit fraud
- rough sleeping

(f) excluding or removing an EEA national or family member of an EEA national with a conviction (including where the conduct of that person is likely to cause, or has in fact caused, public offence) and maintaining public confidence in the ability of the relevant authorities to take such action

(g) tackling offences likely to cause harm to society where an immediate or direct victim may be difficult to identify but where there is wider societal harm (such as offences related to the misuse of drugs or crime with a cross-border dimension as mentioned in Article 83(1) of the Treaty on the Functioning of the European Union)

Examples of behaviour contrary to this interest include:

- drugs offences (e.g. smuggling, supplying, manufacturing drugs)

(h) combating the effects of persistent offending (particularly in relation to offences, which if taken in isolation, may otherwise be unlikely to meet the requirements of regulation 27)

Examples of behaviour contrary to this interest:

- persistent shoplifting

(i) protecting the rights and freedoms of others, particularly from exploitation and trafficking

Examples of behaviour contrary to this interest include:

- high harm criminality
- human trafficking

(j) protecting the public

Examples of behaviour contrary to this interest include:

- high harm criminality
- human trafficking

(k) acting in the best interests of a child (including where doing so entails refusing a child admission to the United Kingdom, or otherwise taking an EEA decision against a child)

Examples of behaviour contrary to this interest include:

- entry of a child if there are concerns as to why they are coming to the UK or who they are travelling with

(l) countering terrorism and extremism and protecting shared values;

EEA national prisoners who can not be deported but wish to return home and want to be removed early under the Early Removal Scheme will be liable to administrative removal under the EEA Regulations 2016. <redacted>

EEA national prisoners released on this scheme who return to the UK **before** the expiry of their original sentence and associated license provisions will be deemed to be unlawfully at large and are liable to arrest and returned to custody.

Should staff at ports of entry encounter an EEA national in these circumstances, who does not wish to make a voluntary departure, the individual should be further examined and detained on the grounds that, under the EEA Regulations 2016 they represent an ongoing threat to the UK's public policy. <redacted>

Once in police custody and having passed through the primary checkpoint, the EEA national prisoner can be deemed to have exercised his free movement rights by entering the UK. An immigration decision is, therefore, no longer necessary.

EEA national former prisoners who return to the UK **after** the expiry date of their original sentence and associated conditions should be considered as an EEA national in the normal manner.

Refusal of an EEA adult with a mental health condition (who is not a Potential Victim of Trafficking (PVoT))

Individuals may **not** be refused admission to the UK **solely** on the basis that they have a mental health condition.

Regulation 23(1) of the EEA Regulations 2016 provides that a person is not entitled to be admitted to the UK if their exclusion is justified on **grounds of public policy, public security or public health**.

Public health

You must **not** refuse a person admission to the UK on public health grounds on the basis of a mental health condition under the EEA Regulations 2016.

For a refusal of admission to be based on public health grounds (regulation 21(7)(a) of the EEA Regulations 2016), the person must have either:

- a disease with epidemic potential as defined by the relevant instruments of the World Health Organization
- a disease listed in Schedule 1 to the Health Protection (Notification) Regulations 2010.

In addition, if the person concerned is in the UK, diseases occurring after the 3 month period beginning on the date on which he arrived in the UK shall not constitute grounds for the decision (see regulation 27(7)(b)).

A mental health condition cannot ever satisfy these conditions.

Where a person with a mental health condition is considered to pose a danger to the public on the basis of previous conduct or convictions, their exclusion may be justified on public policy or public security grounds. However, this decision **must** be based on their conduct and not on their condition.

Serious and imperative grounds

Individuals with a permanent right of residence

Where an EEA national or their family member has established a permanent right of residence, a decision to refuse admission, exclude, revoke residence or remove the person from the UK, is only permitted on serious grounds of public policy or public security.

Serious grounds is not defined in the EEA Regulations 2016 or the directive. To justify a decision on serious grounds, there must be stronger grounds than would be applicable for a person who does not have a permanent right of residence.

Regulation 15 of the EEA Regulations 2016 sets out the circumstances when an EEA national or their family member can acquire a permanent right of residence in the UK.

EEA nationals with 10 years' residence in the UK and EEA children

Under regulation 27(4) of the EEA Regulations 2016, a decision to refuse admission, exclude, revoke residence or remove the person from the UK, is only permitted on imperative grounds of public security. Where an EEA national either:

- has resided in the UK for a continuous period of at least ten years prior to the decision
- is under the age of 18, unless the relevant decision is in the best interests of the person concerned, as provided for by the Convention on the Rights of a Child

Imperative grounds is not defined in the EEA Regulations 2016 or the directive. It must be interpreted more widely than threats to the state or its institutions, and can, for example, include serious criminality, such as drug dealing as part of an organised group. See: Tsakouridis (European citizenship) [2010] EUECJ C-145/09.

Deportation of EEA nationals and family members

Deportation orders (DOs) made against EEA nationals and their families also have to be made on grounds of public policy, public security or public health.

Deportation cases are normally dealt with by Criminal Casework. An EEA national who is served with a notice of a 'decision to make a deportation order' has a right of appeal against this decision. Whilst an appeal is pending the DO itself cannot be made.

EEA cases which become subject to a criminal conviction before being admitted

This relates to persons who are stopped on the control normally because they are of interest to another border agency, such as customs or the police, and as a result the person is convicted of a criminal offence. Under the EEA Regulations 2016 there is no provision to make a DO against a person in these circumstances. Instead ports will need to decide whether to refuse admission on the grounds of public policy or public security.

Where a person has acquired a right to reside in the UK (holding a registration certificate or residence card), **or** persons who are stopped by another agency **after** they have passed through immigration control, they are deemed to have been admitted and can be removed on a DO without the need for the port to make a decision to refuse admission as well. Reference should be made to Criminal Casework.

Port EEA cases subject to an extant deportation order

Where an EEA national or the family member of an EEA national seeks admission to the UK, but is the subject of an extant deportation order, they must be refused admission on the basis that they are not entitled to be admitted while subject to a deportation order. The exception will be if the person has been deported under the EEA Regulations 2016, but is to be temporarily admitted pursuant to regulation 41 (temporary admission in order to submit case in person), for the purpose of making submissions in person at their appeal against deportation.

This is in accordance with regulation 19(1A). You may not encounter many cases involving regulation 41 however, where they are encountered, you must contact Border Force national immigration and customs enquiries (NICE) for guidance.

A person refused admission under regulation 19(1A) should be treated as if they were a person refused leave to enter under the 1971 Act. This is in accordance with regulation 23 (person refused admission).

Deportation orders made under the 1971 or 2007 Acts

There may be some non-EEA nationals previously deported under the Immigration Act 1971 or the UK Borders Act 2007 who must now be considered under the EEA Regulations 2016. For example if:

- the deportation order was made under the above acts before their country of nationality became a European Union (EU) member state
- they were a non-EEA national and they have subsequently been granted citizenship of an EEA country
- they are now the family member of an EEA national

An individual who is the subject of a deportation order made under the Immigration Act 1971 or UK Borders Act 2007 should not normally be admitted to the UK, even if this decision was not made under the EEA Regulations 2016.

Consideration should be given to whether the individual's conduct justifies remaking the deportation order under the EEA Regulations 2016. If not, and the individual meets the criteria for admission, the deportation order should be revoked.

Where these criteria cannot be met and admission is appropriate Criminal Casework (CC) should be contacted so that they can give consideration to revoking the DO. CC may be contacted on telephone number: <redacted>. **This is an internal number and is not for disclosure.**

Related content

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EEA nationals misusing a right to reside

This page tells Border Force officers about European Economic Area (EEA) nationals and their dependants who misuse their right to reside.

All the content of this guidance is classified as official – sensitive and must not be disclosed outside of the Home Office.

Regulation 26 defines the misuse of a right to reside in 4 ways, which are detailed in this section.

Engaging in conduct intended to circumvent the requirement to be a qualified person under regulation 14

Regulation 26 provides grounds for an EEA decision to be made against an EEA national who seeks to avoid satisfying the extended right of residence requirements of regulation 14 (primarily, the requirement to be qualified person, 'exercise Treaty rights') by abusing the initial right of residence under regulation 13.

Regulation 13 provides that an EEA national and their direct family members are entitled to an initial right of residence for three months during which there are no conditions or restrictions placed upon them. If an EEA national wishes to remain beyond this initial 3 month period, they must show that they are a qualified person within the meaning of regulation 6.

However, some EEA nationals seek to abuse this right by leaving the UK shortly before the 3 month period expires, and then re-entering the UK and benefitting from another 3 month initial right of residence. When repeated, this behaviour means an EEA national can reside in the UK indefinitely, without fulfilling the requirement to exercise Treaty rights. Such actions are in contravention to the wording and principle of the Free Movement Directive and are therefore considered a misuse of rights.

An EEA national suspected of misusing their initial right of residence under regulation 13 is likely to be first encountered by Immigration Enforcement. Where the Immigration Enforcement officer can evidence that the person has exited and entered the UK in a manner which suggests he or she wishes to circumvent the requirement to be a qualified person under regulation 6, then administrative removal under regulation 23(6)(c) (abuse of rights) will normally be considered. <redacted> Those subsequently encountered seeking re-admission at the border following removal under regulation 23(6)(c) can be questioned and may be refused admission if there are reasonable grounds to suspect admission will lead to a misuse of rights. In these cases there will be reasonable grounds to suspect that admission will lead to a misuse of rights if the person cannot demonstrate that they will immediately be exercising Treaty rights after re-admission.

<redacted> If there are reasonable grounds to suspect ongoing misuse, for example if the time from the point of flagged encounter to the end of their intended visit is greater than 3 months without any significant absence, and you are satisfied that the

decision is proportionate then you may refuse admission. However, if the individual provides evidence that they will be immediately exercising Treaty rights (a qualified person) then they should be admitted.

<redacted>

Examples of reasonable grounds for suspicion can include (but are not limited to):

- information or intelligence which indicates the passenger has repeatedly exited the UK shortly before the expiry of their initial three month period and they are now attempting to re-enter
- the passenger was encountered and flagged by Immigration Enforcement more than 3 months ago, but cannot demonstrate having been outside the UK for a reasonable time period since that encounter
- the passenger's intended period of stay in the UK, when added to their point of initial encounter, exceeds 3 months

<redacted>

Where an EEA national or direct family member is attempting to enter the United Kingdom within 12 months of being removed under regulation 23(6)(a)

Where an EEA national has been removed under regulation 23(6)(a) for the non-exercise of Treaty rights and wishes to re-enter the UK within the 12 months following removal, regulation 26(4) imposes a duty on that EEA national to demonstrate that he would be a qualified person ('exercising Treaty rights') immediately upon re-admission.

A passenger who fails to demonstrate to you that he would immediately be such a qualified person must be refused admission to the UK as there are reasonable grounds to suspect a misuse of rights, if it is proportionate to do so.

<redacted>

Example
<redacted>

Where an EEA national or direct family member is attempting to enter the United Kingdom following removal under regulation 21B(1)(c) of the EEA Regulations 2006 (pre 1 February 2017)

Under the Immigration (European Economic Area) Regulations 2006 (the EEA Regulations 2006)(regulations 19(3)(c) and 21B(1)(c) enabled an EEA national to be removed from the UK if they entered into, attempted to enter into, or facilitated (assist someone else to enter into), a marriage or civil partnership of convenience (and a criminal prosecution was not brought). This power was primarily used by Immigration Enforcement, often following referral from case working teams. From 1 February 2017, these cases are considered on the grounds of public policy.

An EEA national who has been removed on these grounds under the EEA Regulations 2006 <redacted> and, if they seek re-admission within the 12 month period, they can be stopped and questioned at the border. If you are satisfied that there are reasonable grounds to suspect the abuse will continue then you may refuse admission. A lack of evidence of a change of circumstances (including whether or not the person will be exercising Treaty rights immediately upon re-admission) can be a contributing factor to a refusal but is not the only consideration in these cases.

In determining whether or not there are reasonable grounds to suspect that admission would lead to abuse, you should consider the following points:

- what was the person removed for, and when? (Was it one month ago or 12 months ago?)
- can the person demonstrate any change of circumstances since they were removed from the UK? (Why is their situation different, now? What evidence can they provide to show the Border Force officer why the abuse will not continue?)
- whether or not that person will be exercising Treaty rights immediately upon re-entry to the UK will be a key factor in demonstrating change of circumstances

Example 1

An EEA national was removed under the EEA Regulations 2006 for attempting to participate in a marriage of convenience with a non-EEA national with whom they had no previous relationship. Three months later that person seeks re-admission but cannot provide any evidence of a change of their circumstances in the UK. Therefore it is reasonable to suspect the abuse will continue.

Example 2

An EEA national was removed from the UK under the EEA Regulations 2006 for attempting to participate in a marriage of convenience. Eight months later he seeks re-entry to the UK. He is now married to another EEA national and they are travelling to the UK together for a holiday. After questioning you are satisfied that the relationship is genuine. There are no reasonable grounds to suspect the abuse will continue and so the passenger should be admitted.

Where an EEA national or direct family member commits fraud as defined under regulation 21B(1)(d) of the EEA Regulations 2006 (pre 1 February 2017)

Under the under the EEA Regulations 2006 regulation 21B(1)(d) included a person who has fraudulently obtained, attempted to obtain or assisted another to obtain a right to reside under the EEA Regulations 2006. This is intended to prevent persons from being able to benefit from relying on a fraudulently obtained right of residence. From 1 February, these cases are considered on the grounds of public policy.

Examples of this could include:

- misrepresentation of EEA nationality (false passport or identity card)
- falsified evidence of relationship (fraudulent marriage or birth or divorce certificates)
- falsified evidence of the exercise of Treaty rights (fraudulent wage slips, bank statements, false claims to be self-employed – when HM Revenue and Customs (HMRC) checks confirm the person is not registered and also not paying national insurance or tax)
- misrepresentation of facts which go towards any qualifying criteria (permission to work for Croatian nationals)
- falsified EEA documentation (registration certificate, residence card)
- person claims they are self employed but HMRC checks confirm the person is not registered and not paying income tax or national insurance

As the scope of this subsection is broad, this list is not exhaustive and there could be many other factors that constitute fraudulent acquisition, or attempted acquisition of a right to reside under European law.

An EEA national who has been removed on these grounds <redacted> and, if they seek re-admission within the 12 month period, can be stopped and questioned at the Border. If you are satisfied that there are reasonable grounds to suspect the abuse will continue then they may refuse admission. A lack of evidence of a change of circumstances (including whether or not the person will be exercising Treaty rights immediately upon re-admission) can be a contributing factor to a refusal but is not the only consideration in these cases.

Example 1

An EEA national was removed under the EEA Regulations 2006 for providing fraudulent wage slips as evidence that they are exercising Treaty rights in the UK. Six months later the EEA national seeks re-entry but cannot demonstrate any significant change of circumstances or that they are or will be immediately exercising Treaty rights which is relevant to whether or not the abuse is likely to continue. If that person will be exercising Treaty rights upon re-entry then they are unlikely to try to fraudulently acquire a right of residence again. Given the lack of evidence it is reasonable to suspect that admission will lead to abuse and the individual should be refused.

Related content
Contents

EEA nationals: refusal of admission on the grounds of misuse of rights

This page tells Border Force officers about refusal of admission for European Economic Area (EEA) nationals and their dependants on the grounds of misuse of rights.

All the content of this guidance is classified as official – sensitive and must not be disclosed outside of the Home Office.

Regulation 26 of the EEA Regulations 2016 came into effect on 1 February 2017 and established that EEA decisions may be taken on the grounds of a misuse of a right to reside. Under Regulation 26, you may refuse admission to a person claiming a right of admission under the EEA Regulations 2016 where there are reasonable grounds to suspect that admission would lead to a misuse of a right to reside and where it is proportionate to do so.

The EEA Regulations 2016 define the misuse of free movement rights as follows (though it is not an exhaustive list):

- engaging in conduct which appears to be intended to circumvent the requirement to be a qualified person
- attempting to enter the UK within 12 months of being removed pursuant to regulation 23(6)(a), where the person attempting to do so is unable to provide evidence that, upon re-entry to the UK, the conditions for any right to reside, other than the initial right of residence under regulation 13, will be met (in other words the person is unable to provide evidence that they will be immediately exercising Treaty rights or has any other right of residence upon re-admission – the initial 3 month period does not apply in these cases)

Further details on each of the categories of misuse can be found in EEA nationals misusing a right to reside.

In order for a refusal of admission to be appropriate, even where the above criteria are met, there must be some connection between the conduct of the person in question and the need to prevent their admission to the UK. Proportionality is dealt with in processing an EEA national: misuse of rights .

Under b) a person must demonstrate to your satisfaction that they will be exercising Treaty rights (also referred to as being a ‘qualified person’). A qualified person who is exercising Treaty rights is one of the following:

- a jobseeker (provided the conditions in the new regulation 6(4) and (5) are met)
- a worker
- a self-employed person
- a self-sufficient person who has **sufficient resources for themselves and their family members** not to become a burden on the social assistance system

of the host member state during their period of residence **and** has comprehensive sickness insurance cover in the host member state
- a student who has **sufficient resources for themselves and their family members** not to become a burden on the social assistance system of the host Member State during their period of residence **and** has comprehensive sickness insurance cover in the host member state **and** who is enrolled, for the principal purpose of following a course of study at a, public or private establishment which is financed from public funds or otherwise recognised by the Secretary of State as an accredited establishment

Processing an EEA national: misuse of rights

<redacted>

You must be satisfied that the abuse will not continue, for example the passenger will be exercising Treaty rights immediately on their admission to the UK as a:

- worker
- self-employed person
- self-sufficient person
- job seeker
- student enrolled at a private or public establishment

Examples of evidence a passenger could hold to demonstrate they will immediately be exercising Treaty rights can be found in determining if an EEA national is exercising Treaty rights, along with suggested lines of questioning. In determining whether or not admission will lead to an abuse of rights, you should consider:

- what was the person removed for, and when
- can the person demonstrate any change of circumstances since they were removed from the UK (Why is their situation different, what evidence can they provide to show you why the abuse will not continue)
- after completion of further enquiries, admitting the passenger or refusing admission under Regulation 23(1) or 23(4)
- admitting the passenger only if you are satisfied that there are no reasonable grounds to suspect admission will lead to the misuse of a right to reside and/or if they will be exercising Treaty rights immediately on admission to the UK and there are no public policy, public security or public health considerations

Under European Union law, EEA nationals must be given every opportunity to demonstrate that they are eligible for admission, but if there are still reasonable grounds to suspect that admission will lead to a misuse of rights then admission should be refused.

<redacted>

Refusal of admission: proportionality

If considering refusal of admission, you should check that it would be proportionate to refuse. You should consider issues such as the level of fraud and abuse (how

severe was the abuse?), the personal circumstances of the person (such as their state of health) and any exceptional circumstances.

<redacted>

Handling cases where family members are involved

An EEA national who may fall for refusal under the EEA Regulations 2016 may be accompanied by a family member whose right of residence is dependent upon accompanying or joining the EEA family member. A family member whose right of residence is dependent upon an EEA sponsor is only entitled to be admitted to the UK if they are accompanying or joining an EEA national sponsor.

Therefore, if an EEA national is refused entry, it may be necessary to refuse entry to their family members if there are no other EEA grounds for those family members to be admitted. However, if a family member has an EEA, or other, right of admission in their own capacity, they should be admitted to the UK in the normal way.

<redacted>

New refusal formula: 019 Administrative removal – misuse of rights

<redacted>

Appeal Rights

Appeal rights for misuse of rights cases will mirror existing rights of appeal for EEA nationals.

Additionally, a person who is refused admission on the grounds of abuse of rights or fraud can apply to the Secretary of State to have that decision set aside on the grounds that there has been a material change in the circumstances which justified the decision. This application must take place within 12 months of the decision and can only be made from outside the UK.

Details of any appeal or complaint received in relation to these new powers should be referred to Border Force national immigration and customs enquiries (BF NICE).

Related content

Contents

EEA nationals: determining if an EEA national is exercising Treaty rights

This page tells Border Force officers about the evidence and questioning to determine if a European Economic Area (EEA) national is exercising Treaty rights.

All the content of this guidance is classified as official – sensitive and must not be disclosed outside of the Home Office.

The following sections indicate the evidence you could expect to see to demonstrate that an EEA national is exercising Treaty rights. However, these lists are not exhaustive; you should consider all evidence provided by the EEA national.

You should verify any documentation provided wherever possible.

Where the abuse provisions are engaged and a passenger is only entitled to enter the UK if they are exercising Treaty rights, the burden of proof is **on the EEA national to provide sufficient evidence** to satisfy you that they will be **genuinely and effectively** exercising Treaty rights upon re-admission to the UK.

Only if the person satisfies you that they will be **genuinely and effectively** exercising Treaty rights should they be admitted.

For a worker

The EEA national may submit one or more of the following documents:

- letter of confirmed employment
- employment contract

Evidence submitted must demonstrate that the EEA national will be a worker immediately on admission to the UK.

This evidence must demonstrate that the employment will be meaningful and effective (regular and remunerated) and not marginal or ancillary. You should consider the number of hours worked and the nature of the employment (contracted or just ad hoc). (As a broad consideration employment will be regular (not ancillary) if the person works for 16 hours or more a week, but other factors will also be relevant to the consideration).

Employment can be considered marginal if there is no formal remuneration arrangement between an employer and an employee (a contract) or indication that employment will continue for any length of time. For example, ad-hoc or occasional employment working for a friend or relative for ten hours a week could be classed as marginal and ancillary.

The EEA national may submit evidence other than that listed above, and you should consider on a case by case basis whether the evidence submitted is sufficient to

satisfactorily demonstrate that the EEA national will be a worker on admission to the UK.

Should you have any reasonable concerns regarding the veracity of the evidence presented, they may undertake further checks <redacted>.

For a self-employed person

The EEA national may submit 2 or more of the following documents:

original or certified copy of accounts
original or certified copies of tax payments
original or certified copies of liability insurance
original or certified copies of invoices for work carried out in the last 6 weeks
client list
evidence and details of business premises (tenancy agreement, storage lease or other documents)
examples of business advertising (flyers, online advertising or listing in Yellow Pages or similar)
contracts to provide services in the last 6 weeks - where services have been provided to a company, rather than an individual, this must be accompanied by a letter from the company on letter-headed paper
evidence of required qualifications or membership of a professional body where relevant

Evidence submitted must demonstrate that the EEA national will be a self-employed person immediately on admission to the UK. This evidence must demonstrate that the self-employment will be regular and effective and not marginal or ancillary.

The EEA national may submit evidence other that that listed above, and you should consider on a case by case basis whether the evidence submitted is sufficient to satisfactorily demonstrate that the EEA national will be self-employed on admission to the UK.

Example: an EEA national claims to be self-employed because they intend to offer ad-hoc household cleaning or gardening services in the UK and will distribute flyers to set up their business. This is unlikely to be satisfactory evidence. The person has not provided evidence they will be self-employed immediately upon entry to the UK, and there is no evidence the self-employment will be meaningful and effective.

Should you have any reasonable concerns regarding the veracity of the evidence presented they may undertake further checks <redacted>.

For a self-sufficient person

The EEA national may submit one or more of the following documents demonstrating sufficient funds for the duration of the person's intended stay in the UK:

- original or certified copies of bank statements showing regular income or capital
- original or certified copies of details of financial investments and income
- original or certified copies of pension income (pension book, letter from pension

provider or pension statement)
- letter from accountant setting out details of self-sufficiency
- evidence of comprehensive sickness insurance

Evidence submitted to demonstrate that the EEA national will be a self-sufficient person immediately on entry to the UK should show that the EEA national will have sufficient resources to prevent themselves and any family members from becoming a burden on the social assistance system of the UK and that they hold **comprehensive sickness insurance** for themselves and any family members.

Sufficient resources

European Union (EU) law does not permit member states to set a minimum level of resource which is 'sufficient'. You should consider the circumstances of the removal (was the EEA national previously begging or sleeping rough in the UK) and also the following factors:

- financial commitments, for example:
  - rent
  - mortgage
  - utilities
  - loans
  - credit cards
  - other personal debt
- additional costs, for example
  - travel
  - food costs
- stability and source of the income (payments from friends, relatives or dividend payments, pension payments)
- other evidence not covered above

Whether a person is self-sufficient must be considered on a case by case basis, having regard to all the evidence submitted and the individual circumstances of the EEA national.

Regular income or payments

When considering 'regular income or payments' as a source of sufficient resources, there is no set definition as to how often a payment must be made in order to be considered 'regular'. A payment may be considered 'regular' even if it is not made frequently, where the effect is to provide the EEA national with sufficient resources for the period between those payments. However, we would generally expect a regular payment to be made weekly, monthly or quarterly.

It will be for you to consider whether the evidence submitted demonstrates that the payments have been made on a regular basis and whether these payments will provide the EEA national with sufficient resources while they are in the UK.
You should take into consideration the following when deciding whether a payment or income is 'regular':

- evidence that the payments are part of a continuing arrangement and not sporadic, historic payments
- evidence that the payments provide sufficient resources for the period between payments
- evidence that the payments will continue while the EEA national is in the UK

Comprehensive sickness insurance

It should be noted that in all cases where the EEA national is claiming that they will be exercising free movement rights as a self-sufficient person, they **must** provide evidence that they have comprehensive sickness insurance in the UK. An EEA national can provide the following as evidence of comprehensive sickness insurance:

- a comprehensive private medical insurance policy which covers the EEA national (and any dependent family members who are also seeking admission) for medical treatment in the UK in the majority of circumstances
- a valid European Health Insurance Card (EHIC) issued by an EU member state other than the UK
- a valid S1, S2 or S3 form

Private medical insurance policies

A private medical insurance policy may be provided by a company based either in the UK or in another country. The relevant consideration is whether the policy provides comprehensive medical cover for the EEA national **in the UK.**

You should note that private medical insurance policies may contain exclusions for certain conditions or treatments and still be considered to be comprehensive. A person claiming to be self-sufficient must not be refused admission on the basis that their policy excludes treatment for certain pre-existing health conditions.

It should also be noted that many health insurance policies do not cover maternity care in the UK. A person claiming to be self-sufficient must not be refused admission on the basis that their policy does not cover maternity services in the UK.

Travel insurance policies are **not** acceptable as evidence of comprehensive sickness insurance.

<redacted>

For a student enrolled at a recognised private or public establishment

Passengers may submit one or more of the following documents:

- offer letter from a private or public establishment to confirm passenger enrolled on a course
- letter from private or public educational establishment indicating person has accepted a course
- original or certified copies of educational certificates for any previous studies
- evidence of funding (e.g. bank statements covering the last 3 months,

scholarship details, details of a bursary or details of family member, friend or private sponsorship)
- evidence of comprehensive sickness insurance cover

Evidence submitted should demonstrate that the EEA national will be a student immediately on entry to the UK.

The EEA national may submit evidence other than that listed above, and you should consider on a case by case basis whether the evidence submitted is sufficient to satisfy the officer that the EEA national will be a student on admission to the UK.

Should you have any reasonable concerns regarding the veracity of the evidence presented, they may undertake further checks, <redacted>.

Sufficient resources

A student may satisfy the requirement to hold sufficient resources by means of a declaration to the Secretary of State. If an EEA national provides such a declaration, this must be accepted as evidence of sufficient resources. However, an EEA national who is claiming that they will be exercising Treaty rights as a student must also provide other evidence that they will be studying in the UK and have comprehensive sickness insurance in addition to this declaration of self-sufficiency.

EEA nationals who claim that they will be exercising Treaty rights as a student may also submit evidence of sufficient resources. The consideration is the same as for self-sufficient persons.

Comprehensive sickness insurance

It should be noted that in all cases where the EEA national is claiming that they will be exercising free movement rights as a student, they **must** provide evidence that they have comprehensive sickness insurance in the UK. The consideration is the same as for self-sufficient persons.

As for self-sufficient persons travel insurance policies are **not** acceptable as evidence of comprehensive sickness insurance.

<redacted>

For a jobseeker

For persons claiming that they will be a jobseeker on entry, they must demonstrate that they meet the EU law test which is that they are **actively seeking work** and **have a genuine chance of getting a job** in the UK.

<redacted>

Evidence submitted to demonstrate that the EEA national will be a jobseeker immediately on entry to the UK must show that the EEA national will genuinely be seeking employment on when they are in the UK.

The EEA national may submit evidence other than that listed above, and Border Force officers should consider on a case by case basis whether the evidence submitted is sufficient to satisfy the officer that the EEA national will be a jobseeker on admission to the UK.

Should you have any reasonable concerns regarding the veracity of the evidence presented, you may undertake further checks, <redacted>.

EEA nationals: appeals under the EEA Regulations 2016

This page tells Border Force officers about appeals under the EEA Regulations 2016 for European Economic Area (EEA) nationals and their dependants.

All the content of this guidance is classified as official – sensitive and must not be disclosed outside of the Home Office.

In order to benefit from a right of appeal under the EEA Regulations 2016 a person who claims to be an EEA national **must produce** a valid national ID card or passport issued by an EEA member state. A non-EEA national who claims to be the family member of an EEA national must produce a valid passport and an EEA family permit or qualifying EEA state residence card or other proof that he is related as claimed. If they do not the case should be dealt with under the appropriate part of the rules.

Where the above conditions are met, a decision under the EEA Regulations 2016 will attract a right of appeal. The right of appeal will be from abroad except in the circumstances listed in, in country appeals.

A person **may not rely upon** a ground of appeal under the EEA Regulations 2016 if you certify that the ground was considered in a previous appeal either under the EEA Regulations 2016. An appeal shall not lapse **solely** because the appellant has left the UK.

In country appeals

The following are the only circumstances that will attract an in-country appeal:

- passenger is resident in the UK and holds a valid registration certificate, document certifying permanent residence, EEA family permit, residence card, derivative residence card, permanent residence card or qualifying EEA state residence card (issued by another EEA member state under Article 10 or 20 of the Free Movement Directive)
- when the passenger has been on temporary admission for more than 3 months because their right of entry under the EEA Regulations 2016 is unclear
- when the passenger is in the UK, makes a human rights or asylum claim which is not certified by the Secretary of State as clearly unfounded

Appeals at juxtaposed controls

All EEA decisions made at juxtaposed controls will attract an appeal from abroad. This is because the exemptions listed above are all dependent on the person being in the UK.

Rights of appeal against the cancellation of the family member residence stamp

There is no right of appeal against the cancellation of the family member residence stamp.

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