



Migrant Criminality Policy Operational Notice

Valid from: 01 February 2017

Subject: Implementation of Immigration (EEA) Regulations 2016 – criminality and abuse provisions

1. On 3 November 2016 new regulations were laid which replace the Immigration (European Economic Area) Regulations 2006 (EEA Regulations 2006). The new Immigration (European Economic Area) Regulations 2016 ([EEA Regulations 2016](#)) include substantive changes on criminality and abuse which come into force on **1 February 2017**. A summary of the changes is set out below:
 - The EEA Regulations 2016 provide clarity on the government's interpretation of 'the fundamental interests of society'. A non-exhaustive list of behaviours contrary to the principle of free movement is included in Schedule 1 of the Regulations. Abuse of immigration laws (including sham marriage, the use of fraudulent documents and the smuggling of clandestines), evasion of tax and duties and low-level persistent offending now clearly come within the scope of public policy. This can be a decision to exclude, refuse admission to the UK, refuse documentation or deport an individual.
 - The EEA Regulations 2016 rebalance the proportionality arguments in favour of the Secretary of State's responsibilities towards protecting British citizens and away from an EEA national's free movement rights, in cases where there are public policy or public security grounds for doing so.
 - The EEA Regulations 2016 will enable us to deport EEA nationals and their family members who engage in persistent low level criminality or who seek to abuse their free movement rights.
 - Deportation orders for EEA nationals whose behaviour is contrary to the fundamental interests of society, as defined in the EEA Regulations 2016, will range from indefinite to time-limited (3, 5 or 10 years) depending on the seriousness of the criminality or abuse and proportionality considerations. This is a more robust outcome for those deported on the basis of behaviour classed as abuse (sham marriage, fraud and rough sleeping). However, administrative removal will continue to be an option in cases of not exercising treaty rights, particularly rough-sleeping.
 - The provisions relating to 'abuse of free movement' as set out in the EEA Regulations 2006 have been replaced with provisions to tackle the 'misuse of rights'. These provisions are not directly comparable. Misuse of rights relates to those who re-enter the UK during the period of a 12-month re-entry ban or who repeatedly leave and re-enter the UK in an attempt to 'reset' the 3 month clock in which they do not need to be exercising Treaty rights.

What does this mean in practice for 1 February 2017?

Criminal Casework (CC):

2. Following implementation a small number of Immigration Enforcement and Compliance (ICE) Teams will be tasked to identify low level persistent offenders to refer to CC (Nexus) for consideration for a time-limited deportation (DO). This will test processes and allow capability to build gradually. Guidance and processes for referral of cases are under development and remain subject to agreement.
3. CC will take a more robust approach to EEA cases referred to the Non-Criteria team by National Offender Management Service (NOMS), considering whether deportation can be pursued under the EEA Regulations 2016. An indefinite deportation order will continue to be the norm for individuals who receive one or more custodial sentence.

Euro casework:

Referrals to Criminal Casework

4. From 1 February, Euro casework must refer cases to CC (Workflow) where the PNC check shows that an individual has received:
 - 3 custodial sentences of any length in the last 3 years; or
 - a single custodial sentence of 12 months at any time.

As NOMS refer to CC all foreign nationals who receive a custodial sentence of any length for deportation consideration, cases referred by Euro in line with the above criteria will generally already be on CC systems.

5. Euro casework should make a decision on the application after CC has made a decision about whether to deport the individual. Where a case has been referred to CC and a deportation decision has not been made within 6 months of the application date, Euro casework should refuse the application on the basis of the information contained in the application and on the Police National Computer (PNC) on grounds of public policy or public security as set out in regulation 27.

Impending prosecutions

6. Where an EEA national or their direct family member has an impending prosecution and where a conviction would bring the individual within the criteria for referral to CC (i.e. a sentence of 12 months or more at any time or a third sentence in the last 3 years), Euro casework should inform the applicant that their application is on hold pending the outcome of criminal proceedings.
7. Euro casework should hold the application until the criminal prosecution has concluded and if appropriate refer the case to CC in line with the thresholds set out above.

Sham marriage / fraud

8. Where there is evidence of a sham marriage or other immigration fraud, the case may, where possible within service targets, be referred to the relevant ICE team or PMINT for investigation in line with existing processes.
9. An application that is refused on the basis of a sham marriage without referral for an interview or pastoral visit will fall into the migrant refusal pool (MRP). These cases may be considered

for enforcement action by an ICE team who will consider whether action can be taken against the EEA national.

10. While handover processes between UKVI and ICE teams remain unchanged at the current time, these should be kept under review with the aim of improving the process for identifying sham marriage cases and increasing the number of referrals for deportation on this basis.

Immigration Enforcement:

Sham marriage / fraud / rough sleepers

11. In cases of suspected sham or fraud, ICE teams will need to consider whether there is a case for taking deportation action against the EEA national on grounds of public policy. Such cases will be subject to a 3 year deportation order. The EEA national may be subject to administrative removal **only** if they are not exercising treaty rights. ICE teams will decide which action to take and will serve either a stage 1 (deportation) notice or an IS151 EEA.
12. For rough sleepers, ICE teams will need to consider whether a case should be dealt with through administrative removal (under non-exercise of treaty rights or misuse of rights) or deportation (under public policy). In general Deportation will only be appropriate where there are aggravating factors e.g. persistent anti social behaviour or criminality.
13. Cases subject to administrative removal will be progressed in line with current processes.
14. Cases subject to deportation will be referred to Returns Preparation or the National Removals Command once ICE teams have served the stage 1 notice.

Guidance, training and decision templates:

15. New guidance on EEA public policy and public security decisions, along with other revised EEA-related guidance, will be available from **1 February** at: <internal link redacted>
16. Training on the new regulations has been delivered to operational areas and will be cascaded as appropriate.
17. New decision templates will be available from 1 February.
18. CID changes are underway to reflect the new 3, 5 and 10 year deportation orders as outcomes and to introduce two new IS151A EEA documents and six possible outcomes:
- IS151A (EEA): 23(6)(a) non-exercise of Treaty Rights
 - IS151A (EEA): 23(6)(a) right to reside ceased
 - IS151A (EEA): 23(6)(a) jobseeker exceeding time
 - IS151A (EEA): 23(6)(c) rough sleeper
 - IS151A (EEA): 23(6)(c) re-entry in breach of restriction
 - IS151A (EEA): 23(6)(c) circumventing QP requirements

Any questions regarding the content of this Operational Notice should be sent to <redacted>

<redacted>

Migrant Criminality Policy
Immigration & Border Policy Directorate