

**From:** <redacted>

**Sent:** 01 February 2017 10:18

**Cc:** <redacted>

**Subject:** ICE Cast 1 February 2017 - Implementation of Immigration (EEA) Regulations 2016 – criminality and abuse provisions



## ICECast

To ensure that Sutton 2 rules on instructions and guidance are adhered to all contributions for ICE Cast need to be cleared by the director from the contributing area. Please make sure that a Director's confirmation is attached or is contained within the email trail of the contribution.

**Please ensure messages from ICE Cast are cascaded to all relevant staff**

### **Implementation of the Immigration (EEA) Regulations 2016 – public policy provisions.**

On 1 February, the new public policy provisions of the Immigration (EEA) Regulations 2016 relating to criminality and abuse come into force. These changes include:

- Clarifying what is meant by the 'fundamental interests of society', to include abuse of immigration laws (including sham marriage and fraud), anti social behaviour, evasion of tax and low level persistent offending in a non-exhaustive list.
- Introducing time-limited deportation orders (3, 5 or 10 years) in addition to indefinite orders for those whose behaviour is contrary to the fundamental interests of society, depending on the seriousness of the abuse or criminality. However, administrative removal will continue to be an option for rough sleepers where appropriate, and in cases of non-exercise of Treaty rights.
- Rebalancing the proportionality consideration in public policy decisions in favour of the Secretary of State's responsibilities towards protecting British citizens and away from an EEA national's free movement rights.
- Provisions to administratively remove individuals who 'misuse their rights', for example those who re-enter the UK during a 12 month re-entry ban, or who repeatedly leave and re-enter the UK in an attempt to 'reset' the 3 month period in which they are required to exercise Treaty rights.

**What this means for Immigration Enforcement:**

### *Sham marriage / fraud / rough sleepers*

- 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 where appropriate. 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.
- 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.
- Cases subject to administrative removal will be progressed in line with current processes.
- Cases subject to deportation will be referred to Returns Preparation or the National Removals Command once ICE teams have served the stage 1 notice.

You can find links to the relevant guidance on Horizon below:

Public Policy Guidance: <redacted>

Enforcement Instructions and Guidance: <redacted>

You will also find attached process maps for the new process, and an interim guidance note from Migrant Criminality Policy Team which sets out the policy changes in further detail. Training for IE colleagues affected by these changes is being rolled out over the next few weeks. Further work is underway on the processes for referrals from Courts, and this will be communicated in the near future.

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Policy and Partnership Team

IE Strategy and Planning Directorate

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