

Chapter 50 (EEA) – EEA Administrative Removal

Instructions for assessing whether to administratively remove an EEA national [or a family member of an EEA national]

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1 Introduction and purpose

This chapter explains the operational process for the administrative removal of an EEA national, or a family member of an EEA national.

This chapter does not cover in detail, the deportation of EEA nationals, including those who are persistent, **low level offenders**. CC EEA Deportation Guidance.

[Annex A \(flowchart\)](#) provides a summary of the process.

1.1 Overview of January 2014 changes

On 1 January 2014 the Home Office approach to the removal of EEA nationals changed. In summary:

- **Re-entry following administrative removal:** EEA nationals who are administratively removed for not exercising Treaty rights (under the current provisions) will not be able to re-enter the UK for twelve months following removal unless they can demonstrate that they will immediately be exercising Treaty rights upon re-entry.
- **Removal following abuse or fraud of free movement rights:** EEA nationals can now also be administratively removed from the UK for the abuse or fraud of EEA free movement rights (where appropriate and proportionate), namely: for participating in or facilitating a marriage of convenience, for trying to fraudulently acquire residence rights and for conduct designed to circumvent residence requirements (e.g. exiting and re-entering to re-set the clock for the initial, unconditional, right of residence).

In addition individuals can continue to be considered for deportation by Criminal Casework in persistent, low level offending cases as well as for serious offences.

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2 EEA nationals

For the purposes of the [Immigration \(EEA\) Regulations 2006](#)¹ ('the EEA Regulations'), an 'EEA national' is a national of a Member State of the European Union (EU) other than the UK, or a national of Iceland, Liechtenstein, Norway or Switzerland. EEA nationals have rights of free movement and residence within the EEA States, subject to certain limitations.

¹ The Immigration (European Economic Area) Regulations 2006 as amended

Where an EEA national has a right to reside in the UK under the EEA Regulations their direct family members (who may not themselves be EEA nationals) are afforded the same rights of free movement and residence. See Direct family members of European Economic Area (EEA) nationals for full guidance on direct family members.

Extended family members of EEA nationals do not acquire a right of residence on the basis of their relationship to an EEA national unless they have been issued with the relevant documentation by the Home Office. See Extended family members of EEA nationals for full guidance on extended family members.

The family members of an EEA national are defined in regulation 7 (direct family members) and regulation 8 (extended family members) of the 2006 Regulations.

For additional guidance on investigating claims to be an EEA family member, please see EIG Chapter 30.11.2.

See Abuse of rights, fraud and verification of EEA rights of residence for full guidance on rights to reside.

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2.1 Initial right to reside - EEA nationals who have been in the UK for less than three months

An EEA national has an initial right of residence for three months beginning on the date on which s/he is admitted to the UK (regulation 13).

During this three month period, an EEA national must not become an unreasonable burden on the social assistance system of the UK (i.e. they must not seek to access certain benefits). There are no other conditions or restrictions placed upon them (other than the requirement to have a valid passport or ID card). If an EEA national wishes to remain beyond this initial three month period, they must show they are

exercising Treaty rights in the UK (see [extended rights](#) for further detail).

However, an EEA national can be removed from the UK during their initial three month period of residence on the grounds of abuse of rights or fraud (see [criteria for admin removals under regulation 19\(3\)\(c\)](#)).

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2.2 Extended right to reside - EEA nationals who have been in the UK for longer than three months and up to five years.

Beyond the initial three month period an EEA national is entitled to remain in the UK as a 'qualified person' through exercising a Treaty right. **An individual may lose their right to reside and be subject to administrative removal if they cease to exercise a Treaty right.**

The term 'Treaty right' refers to the following categories:

- Jobseeker
- Worker
- Self-employed person
- Student
- Self-sufficient person

You must familiarise yourself with the Treaty rights as defined within the EEA Regulations, before considering administrative removal of an EEA national, or a family member of an EEA national.

The family member of an EEA national may lose their entitlement to an extended right to reside in the UK, and be **subject to administrative removal**, if the EEA national ceases to exercise a Treaty right, or if the individual ceases to be a family member of the EEA national.

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2.3 Permanent right to reside - EEA nationals who have been in the UK for longer than five years

The EEA Regulations also set out that after a period of five years of continuous lawful residence in the UK, in accordance with the EEA Regulations that were in force during that five year period, an EEA national, or a family member of an EEA national, who is in the UK acquires a right of permanent residence that does not require them to be exercising a Treaty right, and which can only be lost through an absence from the UK of more than two consecutive years.

Please refer to Permanent rights of residence in the UK for full guidance on eligibility for permanent right to reside.

If you require advice on establishing if there is a permanent right to reside, or on what constitutes lawful residence, please consult the European Operational Policy Team.

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2.4 Retained right to reside

There are a number of circumstances, as set out in regulation 10 of the 2006 Regulations, in which non-EEA national family members of EEA nationals may retain their right of residence in the UK if the EEA national leaves the UK, dies, or the relevant marriage or civil partnership is terminated. Family members of European Economic Area (EEA) nationals who have retained the right of residence.

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3 Powers for the administrative removal of EEA nationals and their family members

An administrative removal may be undertaken against an EEA national or their direct family member in accordance with:

- [Regulation 19\(3\)\(a\)](#) where there is evidence that the person never had, or has ceased to have, a right to reside under the EEA Regulations (e.g. where the EEA national is no longer a qualified person, or where a non-EEA national family member has ceased to be the family member of an EEA national), or
- [Regulation 19\(3\)\(c\)](#) on the grounds of an abuse of rights under the EEA Regulations (even if the EEA national has been in the UK for less than three months, or is otherwise exercising Treaty Rights. In serious cases of abuse it can apply to a person who has a permanent right of residence).

Both regulation 19(3)(a) and 19(3)(c) apply as if they were someone to whom section 10(1)(a) of the 1999 Act applies (EEA regulation 24(2) refers).

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4 Criteria and suitability for EEA administrative removal

Before making the decision to remove an EEA national or a family member of an EEA national, all **reasonable steps** must be taken at that time to ascertain whether the individual fits the EEA administrative removal criteria as set out below:

- **Under regulation 19(3)(a)**
 - a. They have been resident in the UK longer than three months, **and**
 - b. They have yet to acquire a right of permanent residence, **and**
 - c. They do not have a right to reside on another basis, **and**
 - d. They are failing to exercise a Treaty right **or** they are the family member of an EEA national who is failing to exercise a Treaty right

- e. It is “[proportionate](#)” to proceed with removal given all the circumstances of the case.

- **Under regulation 19(3)(c)²**

Where there are reasonable grounds to suspect the abuse of free movement rights or fraud:

- They have engaged in conduct which appears to be [intended to circumvent the requirement to be a qualified person](#), **or**
- They have entered into, attempted to enter into, or assisted another person to (attempt to) enter into a [marriage of convenience](#), **or**
- They have [attempted to enter the United Kingdom within 12 months of being removed under regulation 19\(3\)\(a\)](#) where the person attempting to do so is unable to provide evidence that, upon re-entry, the conditions for any right to reside, other than the initial right of residence, are met, **or**
- They have [fraudulently obtained, attempted to obtain or assisted the \(attempted\) fraudulent acquisition of a right to reside](#) under the EEA Regulations, **and**
- It is “[proportionate](#)” to proceed with removal given all the circumstances of the case.

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4.1 Removal under Regulation 19(3)(c) – Engaging in conduct intended to circumvent the requirement to be a qualified person under Regulation 14

Although many EEA nationals regularly enter and exit and rely on repeated periods of initial residence for legitimate reasons – for example, for leisure, family or business purposes, this provision can only be used in cases of abuse, i.e. where there is behaviour that is intended to abuse the initial three month right of residence in order to circumvent the requirement to exercise Treaty rights.

² Regulation 19(3)(c) makes provision for the Secretary of State to administratively remove a person on the grounds of abuse of rights in accordance with regulation 21B(2).

For example, an EEA national who repeats a cycle of leaving the UK shortly before their three month period expires, only to re-enter **in order to benefit from a further three month's period of residence**, therefore being able to reside indefinitely without exercising Treaty rights.

- If, after questioning, it is **clear** that the person has only left the UK for a short period of time in order to deliberately secure a further three month initial right of residence, then administrative removal action can be considered as it is reasonable to conclude this is an abuse of rights.
- If you suspect an EEA national is trying to circumvent the requirement to be a qualified person, but there is insufficient evidence you should consider flagging the **suspected** abuse. (See [Flagging suspected abuse cases](#)).

It will generally only be considered to be reasonable to make a decision to remove an EEA national on these grounds where the EEA national has been encountered more than once for the repeated behaviour. There may be exceptions to this, for example, if the EEA national admits that they have been abusing their initial right of residence.

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4.2 Removal under Regulation 19(3)(c) - Marriages of convenience

Under EU law marriages of convenience are defined as marriages contracted for the **sole** purpose of obtaining a right of free movement and residence under the Directive to which someone would not otherwise be entitled.³ The key factor in a marriage of convenience is the absence of intention of the married couple to lead a genuine marital life and create a family unit.

Regulation 21B(1)(c) enables an 'EEA decision' (including administrative removal) to be made where there are reasonable grounds to suspect **an EEA national** has

³ Recital 28 of Directive 2004/38/EC

either entered into, attempted to enter into, or assisted another person to enter into or attempt to enter into, a marriage of convenience. This provision should be considered alongside other responses such as referral to Criminal and Financial Investigation (CFI) teams for prosecution.

In such cases, a decision to administratively remove **an EEA national** (who for example, would not otherwise be removable because they are exercising Treaty rights or have permanent residence) can be made under regulation 19(3)(c) where this is considered proportionate.

Non-EEA Nationals – removal decisions

Under EEA Regulations a ‘spouse’ does not include a party to a marriage of convenience, preventing non-EEA nationals from acquiring EU law rights directly from the marriage. However, they may have already obtained EU law rights outside of the marriage.

- **Genuine EU law rights but involved in abuse**

A non-EEA national who has acquired EU law rights through:

- being a genuine family member of an EEA national who is exercising Treaty rights, or
- retaining rights under the EEA Regulations (see [paragraph 2.4](#) and Family members of European Economic Area (EEA) nationals who have retained the right of residence)

may be removed under regulation 19(3)(c) in the same way as an EEA national if they meet the criteria outlined in [paragraph 4](#) of this guidance.

- **No genuine rights but has obtained residence card on the basis of a sham relationship**

If the Home Office has previously recognised someone as having an EEA right (even if that was on the basis of a sham relationship) a removal decision should be taken under regulation 19(3) (a) of the EEA Regulations. This will automatically invalidate the residence card at the same time. An appeal against removal under regulation 19(3) (with the exception of a decision

taken on the grounds of public policy, public security or public health under 19(3)(b)) will suspend removal.

- **No Acquired rights:**

Where a non-EEA national who has not acquired EU law rights enters into, or attempts to enter into, a marriage of convenience, they will become liable to removal.

- Standard procedures in EIG chapter 50 (non EEA) should be followed if the non-EEA national does not hold extant leave but requires it (overstayers and illegal entrants), has breached their conditions, or has obtained leave by deception.
- Procedures in EIG chapter 30.11.1.1 should be followed for fast track referral to curtailment team, if the non-EEA national has valid extant leave (for example, as student or worker) **and** has not breached its conditions.

See [Annex D - Summary of removal powers for individuals involved in EEA marriages of convenience](#)

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4.3 Removal under Regulation 19(3)(c) - Fraudulently obtaining, attempting to obtain, or assisting another to obtain a right to reside.

Regulation 21B(1)(d) covers **EEA nationals** who fraudulently obtain, attempt to obtain or assist the fraudulent acquisition of, a right to reside under the EEA Regulations. Examples of this could include:

- misrepresentation of EEA nationality (false passport or identity card)
- falsified evidence of relationship (fraudulent marriage/birth/divorce certificates etc)

- falsified evidence of the exercise of Treaty rights (for example, fraudulent wage slips, bank statements, letters confirming study, claims a person is self employed but HMRC checks confirm the person is not registered)
- misrepresentation of facts regarding any qualifying criteria (permission to work for Croatian nationals, permanent residence etc)
- falsified EEA documentation (registration certificate, residence card etc).

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

In such cases, a decision to administratively remove an EEA national can be made under regulation 19(3)(c) where this is considered proportionate.

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5 Stage 1: Determining suitability for administrative removal

5.1 Initial encounters

Although there may be factors that indicate abuse or non exercising of Treaty rights, it is important to investigate each case fully on its own merits, for example:

- Although rough sleeping may indicate unemployment or criminality, the individual may still qualify under another category of Treaty right such as student or self sufficient person.
- cash-in-hand employment or non-payment of UK tax or National Insurance, does not automatically lead to non exercising of Treaty rights, the employment may still be deemed meaningful under the EEA Regulations. The issue of tax avoidance can be reported to the relevant authorities as a separate matter.

If following the initial encounter you are satisfied that the individual fits the EEA [administrative removal criteria](#) (for example, where a person is clearly not exercising Treaty Rights after three months residence or admits to a engaging in a marriage of

convenience), you can dispense with service of the minded to remove letter and proceed straight to service of the notice of liability to removal (IS 151A EEA) and notification of decision to remove (IS 151B EEA). See [service of administrative removal papers](#).

In these cases the verbal statement or other evidence must be recorded in the officer's notebook, reviewed and initialled by both the officer and the individual as part of the interview record. EIG 61.11.2 Pocket note books (PNBs).

However, in practical terms, when they are first encountered by the Home Office, the EEA national may not immediately have sufficient evidence of length of residence in the UK such as travel tickets and tenancy agreements, or documentation evidencing any Treaty rights that are being exercised, and further investigations may need to be undertaken.

When considering the EEA national for administrative removal, you should consider whether deportation on the grounds of public policy may be a more appropriate response.

If there is indication, but not strong evidence, of criminality or other penalties, you should invite the individual to attend a minded to remove interview to investigate further. In cases where there is strong evidence of criminality, for example you have access to recorded criminality by the individual from the PNC, you should consider whether detention would be appropriate pending a removal or deportation decision.

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5.2 Service of the minded to remove letter (inviting the individual to interview)

If you need to undertake further investigation (to establish facts, and determine any suitability for administrative removal or referral for deportation), you must serve ICD

4621, the 'minded to administratively remove' letter, inviting the individual to interview to provide further details and evidence.

Service of the letter should be recorded on CID. See [Fig.2 CID instructions](#). There is no specific time limit between the service of this letter and the date of the interview but a reasonable period of time should be given to allow the individual to provide the requested evidence.

Where you are inviting the person to a second minded to remove interview for additional investigation, or following failure to attend the first (see [Factual Inferences](#) section), the reasonable period of notice should reflect that fact that the individual would have already been made aware of the information required.

Service of the minded to remove letter may trigger new regulation 20B of the EEA Regulations. See section 5.3.3 – [Insufficient Information provided or 'no shows'](#).

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5.3 The minded to remove interview

The minded to remove interview, where required, allows for further information to be gathered about the individual's residence which will allow you to establish if they fit the EEA administrative removal criteria. Evidence should include, but not be limited to:

- The length of time they have been in the UK, and
- The basis on which they have been residing in the UK– that is, as an EEA National who is exercising a Treaty right in the UK, **or** as the family member of an EEA national who **is** exercising a Treaty right in the UK (see [Extended right to reside](#) and EEA Regulations for full guidance on the meaning of 'Treaty right').

The minded to remove interview does not have to be carried out under caution, or be recorded on tape, a hand written record of the interview is sufficient with the interviewee given the opportunity to initial each answer and sign at the bottom to

agree it as a true record. You should update CID notes with summary of the interview, even where the decision to remove is not taken, so that officers are aware of previous considerations should the individual be encountered again.

At any point, if you suspect marriage of convenience may have taken place, you should investigate by conducting a marriage interview, which should be carried out in accordance with PACE if:

- i) a criminal offence is suspected, and
- ii) if it is intended to prosecute.

If there is no such intention then PACE will not apply.

Further guidance is in sections 12.13 of EIG Ch30 – sham marriages.

If during the course of **any** interview, suspicion arises to suggest prosecution might be appropriate – including under trafficking offences, it would be inappropriate to continue without PACE safeguards, before referring the offence to the relevant criminal investigating authorities – either CI, police or even NCA. See EIG chapter 37 Interviewing for full detail.

Authority to remove will be given in line with current Home Office policy following consideration of any compelling and/or compassionate circumstances and on the individual merits of the case.

In all cases, relevant investigation must be undertaken in conjunction with the appropriate departments e.g. National Document Fraud Unit (NDFU) for suspected fraudulent documents, CFI/ Police/ Criminal Casework for any criminal activity, etc.

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5.3.1 Fraudulent documents, false nationalities, aliases

Where there are reasonable grounds to suspect an EEA national presented fraudulent documents or false information regarding their nationality or identity, **then action may be taken to administratively remove that person under regulation**

19(3)(c) in line with regulation 21B(1)(d) where it is proportionate to do so (see [section 4.3](#)).

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5.3.2 Exceptional circumstances

Consideration must also be given to any exceptional circumstances that may prevent administrative removal (see Chapter 53 of the EIG).

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5.3.3 Flagging suspected abuse of free movement rights

Where you suspect an EEA national is trying to circumvent the requirement to be a qualified person, but there is insufficient evidence for a removal, you should consider flagging the suspected abuse on CID so that officers (both in country and at the border) are aware of previous considerations should the individual be encountered again. (See [Scrutiny at the border](#) for full details).

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5.3.4 Insufficient information provided or ‘no shows’

Should insufficient information be provided for a decision during the interview, or you wish to consider removal action following an individual refusing or failing to show for a requested interview, you should conduct reasonable checks of available sources of information to establish whether the person has a right to reside.

For example, if the person claims to be a worker then you could seek to verify the existence of the employer – are they registered with Companies House where relevant? Can you verify the terms of employment? (preferably by using contact details sourced independently, rather than those provided by the EEA national).

Factual inferences may be drawn about the EEA national or their family members entitlement to reside if the individual fails to attend the MTR interview, or fails to provide sufficient information by the date set, on at least two occasions without good reason. You must not decide this on the **sole basis** of the failure to comply, and you should conduct all reasonable checks of available sources of information to establish whether the person has a right to reside.

This is in line with regulation 20B of the EEA Regulations which came into effect on 1 January 2014. For further information on this see EOPN 10/2014.

Where it is determined administrative removal criteria have been met, proceed to section [Service of administrative removal papers](#).

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5.3.5 Deportation of low level persistent offenders

Where checks reveal a criminal history (either in the UK and overseas), including low level persistent offending, it may be appropriate to consider, depending upon the nature, severity and escalation of offences, whether deportation for public policy or public security reasons is more suitable **before** proceeding with administrative removal.

During the MTR interview and with subsequent checks, officers should use the questionnaire at [Annex C](#) to investigate whether the individual has any custodial sentences, fines, suspended sentences, and community orders, and consider the factors below:

- Whether the person has committed a serious crime in the UK or overseas or whether there is a pattern of low level persistent offending that is harmful to the public.
- Whether the pattern of offending indicates escalating seriousness and the potential of future risk of harm.
- Whether there is a risk of re-offending.
- Whether the individual has acquired a right of permanent residence through five years' residence in the UK.
- Whether the individual has close family ties in the UK.

For more information on the criteria for the deportation of EEA offenders, see European Economic Area (EEA) foreign national offender (FNO) cases.

Where officers establish that the deportation criteria is likely to be met, they should check CID (under associated cases) to confirm whether the individual is already subject of a NOMS referral or active criminal case, officers must only refer non-NOMS referred cases to CC to pursue deportation.

Referrals must be made on [Annex C](#) to the CC intake team inbox for CC, following approval from an **ICE CIO**.

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5.5 Maintaining proportionality on the decision to administratively remove

Consideration must be given to the following factors, to ensure proportionality is maintained when taking a decision to administratively remove an EEA national or their family member. Each case must be assessed on its individual merits considering the:

- [Level of fraud / abuse](#)
- [Personal circumstances](#)
- [Type of decision being taken](#)

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5.5.1 Level of fraud/abuse

Grounds that may be a factor in making a decision to remove under Regulation 19(3)(c) could include:

- whether the EEA national was complicit in any fraud or abuse:
 - e.g. was the EEA national a willing participant in a marriage of convenience?
 - If the EEA national was complicit in the marriage of convenience, there may be indicators such as bank statements showing large transfers of funds shortly before the wedding (in such cases also refer to Criminal and Financial Investigation (CFI) teams to consider action under the Proceeds of Crime Act). These must be assessed on a case-by-case basis.
- whether the EEA national was being threatened to comply:
 - e.g. if the EEA national was acting under duress, this is a factor that must be considered and appropriate action taken.
 - In some cases the marriage might be an enabler for more serious offences, for example sexual exploitation or domestic servitude. In such instances the EEA national could be a potential victim of

trafficking and a referral to the National Referral Mechanism (NRM) may be appropriate. In such instances you must contact your senior caseworker / CIO immediately.

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5.5.2 Personal circumstances

Personal circumstances must be taken into account when considering whether a decision under regulation 19(3)(c) is proportionate. This includes regard to the relevant person's:

- age
- state of health
- family ties to the United Kingdom
- length of residence in the United Kingdom
- social and cultural integration
- economic situation.

Contrast the two examples below:

1. an EEA national who has been in the UK for six months and has entered into a marriage of convenience in full knowledge that the marriage was not genuine. They are fit and healthy and although they are working they have no other ties to the UK.
2. an EEA national with a lawfully acquired right of permanent residence who has lived in the UK for the past seven years and who has recently entered into a marriage of convenience in full knowledge that the marriage was not genuine. They have three children with a previous partner, the children have lived their whole life in the UK. The EEA national continues to work in the UK and has integrated fully into UK life.

Although in both examples the EEA national was complicit in the marriage of convenience, it would be less proportionate to remove in the second example

because of their length of residence, ties with the UK and their integration.

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5.5.3 Type of decision being taken

The decision being taken will depend upon the status of the relevant person and the proportionality of that decision. “An EEA decision” is defined within regulation 2 of the Regulations and includes decisions taken to refuse an application for, or revoke, a document issued under EEA law, to refuse admission to the UK or to make a removal decision in line with regulation 19(3). The greater the effect of the decision, the greater the emphasis placed on proportionality.

An example of a disproportionate decision to **serve administrative removal papers** could be:

- where an EEA national has been living lawfully in the UK as a student for three years and has a child at school here, but the EEA national does not have the comprehensive sickness insurance in the UK, as required when exercising Treaty rights as a student.

Although there is evidence that the EEA national is not fulfilling all the requirements for the exercise of Treaty rights, given the length of residence here and the family situation, it would be disproportionate to serve administrative removal papers to the EEA national in these circumstances. However, any further or more significant non-exercise of Treaty rights or abuse may affect the proportionately of any decision to remove.

If necessary advice should be sought from a senior caseworker/CIO or a referral made to the European Operational Policy Team.

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6 Stage 2: Initiating administrative removal

Once:

- Initial [investigations](#) are complete
- deportation has been ruled out
- it is determined [criteria](#) for administrative removal have been met, and
- it is considered [proportionate](#) to administratively remove.

You can proceed to serve administrative removal papers on the individual.

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6.1 Service of administrative removal papers on an EEA national

Service of an IS 151A (EEA) and IS 151B (EEA) must be authorised by an HMI / SEO, and authority to enforce administrative removal is required at Assistant Director (AD) level.

Where suitability for administrative removal has been established, in the absence of the individual, the IS 151A (EEA) and IS 151B (EEA) can be served to file.

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Service of the IS 151B (EEA) provides a right of appeal by virtue of EEA regulation 26, and triggers a period of 10 working days during which the individual can appeal the decision to administratively remove (five working days for detained cases). Relevant appeals papers (ICD 1041 and ECD 3138) should also be served.

EEA regulation 24(6) states that the EEA national or their family member should be allowed **one calendar month** (interpreted as 30 days) to leave the UK voluntarily, beginning on the date on which they are notified of the decision to remove by form IS 151B (EEA), prior to enforced removal. **Removal should take place as soon as possible following this period of notification.** Removal cannot take place while any in country appeals are ongoing.

Fig 1. Summary of notification periods.

Form	Notification Periods
IS 151 A(EEA)	Does not initiate any notice periods
IS 151 B (EEA)	Initiates <ul style="list-style-type: none"> • a 10 working day notification for appeals, and • a 30 day (minimum) period of notice* during which the individual is invited to leave the UK. <p>These periods of notice will run concurrently</p>
IS 151 D	The form must be served at least 72 hours prior to removal, with a removal date at least one calendar month after service of the IS 151B (EEA). In practice the form can be served along with the IS 151 B (EEA) allowing the 72 hours period to run concurrently with the other periods of notice.

*The notification period of one calendar month, may not apply in cases of duly substantiated urgency where the person is detained following sentencing or a court order. For example, FNO cases that will remain in custody whilst being considered under the early removals scheme (ERS).

You should complete the following actions:

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- Serve IS 151A (EEA) notice of liability to removal
- Fingerprints must be taken and sent to the Immigration Fingerprint Bureau (IFB)
- Serve IS 151B (EEA) notification of decision to remove
- Serve appeals papers (ICD 1041 and ECD 3138)
- Complete IS 126E confirming decision and authorities
- Serve IS 151D removal directions
- If appropriate, serve IS96 (EEA) form placing individual on TR with reporting restrictions. (ERS cases remain in custody)

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6.2 Withdrawing a decision following a change in circumstances

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Officers **must** complete an IS217 if the person's circumstances change and they are no longer liable for removal. The relevant CID outcome should also be completed noting withdrawal of the IS151A (EEA), and any restrictions be withdrawn.

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7 EEA family groups

EIG Chapter 45 (a-c) - Families and children should be read and followed in conjunction with this guidance when processing **any** EEA family group (with and without children aged under 18) who are subject to administrative removal.

7.1 When to use the family returns process

The family returns process (FRP) will apply to all EEA families with a **dependent** child or children (aged under 18) where an adult family member is liable to be removed, and where the children will either be removed as a dependant of that adult (or may be reasonably expected to accompany them).

EEA families with children under 18 should be referred to the Family Returns Team at the earliest possible opportunity:

- once all in-country appeal rights have been exhausted and the family has no legal right to remain in the UK (i.e. if no appeals are received within the ten day period of notice after service of the IS 151 B (EEA), and any outstanding documentation or other barriers can be resolved in parallel with the returns process, or
- where the family has indicated that they wish to leave the UK voluntarily and are willing to sign a disclaimer (IS101 (EEA)), withdrawing any outstanding notification periods and outstanding applications. Please note, Assisted Voluntary Return for Families and Children (AVRFC) does not apply to EEA family cases.

For full details of the FRP, please refer to EIG Chapter 45(b) - Families returns process operational guidance.

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8 Amendments to removal directions

EEA administrative removals taking place after the 30 day period of notice is complete should be treated as a standard admin removal in terms of the rules for 72 hours of notice for removal. (However, as outlined above, removal directions should be set at the same time as service of the IS 151B (EEA), so the notice periods can run concurrently).

Where amendments are subsequently made to removal directions you should refer to section 3.2 of the guidance in EIG Chapter 60 - Judicial reviews and injunctions for details about whether or not to grant a second 72 hours period.

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9 Voluntary departures

Where an individual wishes to make a voluntary departure prior to removal, following service of an IS 151A (EEA) form or an IS 151B (EEA) form, the IS 101 (EEA) voluntary departure disclaimer form must be completed and held on file. The form includes a script which must be read out to the individual.

Removals should take place as soon as reasonably possible. See EIG Ch48 - making flight arrangements for full guidance on voluntary departures.

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10 Temporary Admission

Under the EEA Regulations and the Free Movement Directive (2004/38/EC), EEA nationals and their family members do not need permission to enter the UK for an initial three month period of residence or where they are exercising a Treaty right as a worker, active job seeker, self-employed person, self-sufficient person or student.

As such, temporary admission should **not** be granted to an EEA National or their family members save for in the exceptional circumstances set out in EEA regulation 22. See EEA rights of admission for full details.

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11 Imposing restrictions whilst in the UK

Any measures restricting an EEA national, or their family members, whilst in the UK including restrictions on:

- residency
- reporting
- employment

need to be proportionate and taken on a case by case basis. In the majority of cases, such restrictions would be considered disproportionate and may act to prevent the individual from exercising Treaty rights.

Advice should be sought from the European Operational Policy Team where required, before the decision to impose restrictions is made.

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12 Retention of documents

You do not have powers to retain documents of EEA nationals until the point at which an IS 151A (EEA) has been served. At this point paragraph 17 of the 2004 Act allows for retention of documents to facilitate removal.

However, should the EEA national make a reasonable request for the document to be returned (e.g. for a job interview) during the 30 day notification period, you should consider this on a case by case basis, as withholding the document may prevent the individual from exercising Treaty rights.

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13 Detention

EEA nationals and their family members should **not** be detained whilst a decision to administratively remove is pending.

AD authority must be given for the removal. Following the decision to administratively remove (service of the IS 151A EEA), individuals may be detained at the authority of an HMI/SEO, where it is decided upon balance that detention is necessary (i.e. if an individual is suspected of actively engaging in criminality or there is a clear risk of absconding) **and the individual meets the current Home Office criteria for detention**. An AD should review detention at the 24 hours point.

Regulation 19(3)(b) provides an anticipatory power of detention for cases being considered for deportation, meaning that EEA nationals and their family members who meet the criteria may be detained whilst a decision on deport is pending with criminal casework (CC), see [Deportation of low level persistent offenders](#). **Should CC decide not to proceed with deportation, detention may only continue lawfully if we proceed with administrative removal instead AND have served an IS 151A EEA.**

Any decision to detain EEA nationals and their family members prior to removal should not be taken lightly, as this would leave the Home Office open to potential accusations of preventing the individual from exercising Treaty rights, thereby satisfying the criteria for a right to reside.

See EIG Ch55 - Detention for full details on detention criteria, including guidance relating to the detention of families and children (section 55.9.4), and EIG Ch45 – Families and children’s guidance for family separations guidance.

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14 EEA administrative removal and the early release scheme (ERS)

Where CC workflow determines that a case is not suitable for deportation, they will forward the case to removals casework to consider all known facts to determine if the individual is suitable for EEA Administrative removal or not. See [Criteria and suitability for EEA administrative removal](#).

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14.1 Cases suitable for EEA administrative removal under the Early Release Scheme (ERS).

The relevant caseworker must follow the ERS process, as detailed in the CC Early Removal Scheme instructions. This includes completion of the referral forms and gaining authorisation from NOMS.

If authority to administratively remove under the ERS scheme has been granted by NOMS, the caseworker should follow [Service of papers](#) before referring to relevant ICE team tasked with removal.

Wherever possible, removal should be effected on or as soon after the automatic release date (ARD), conditional release date (CRD) or parole eligibility date (PED) where applicable.

More information about the early removals scheme (including eligibility, allocation of cases, and assessment of removability is detailed in the CC Early Removal Scheme instructions.

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14.2 Cases not suitable for EEA Administrative removal or where ERS authority is not granted

The relevant caseworker must issue an ICD.0260 EEA warning letter, and update CID and the file record.

The completed ICD 0260 (EEA), should be faxed to the Governor of the Prison at which the individual is serving their custodial sentence. The service of the form should be noted on CID.

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15 EEA nationals who re-renter / attempt to re-enter the UK following administrative removal

15.1 Scrutiny at the border

Regulation 19(3)(a)

From 1 January 2014, any EEA national removed under regulation 19(3)(a) for not exercising Treaty rights, must demonstrate that they will be a qualified person exercising Treaty rights immediately upon re-entry, should they seek to return to the UK in the twelve months following their removal. Where such a person fails to demonstrate this, Border Force staff may refuse admission to the UK.

Regulation 19(3)(c)

Where an EEA national, or family member of an EEA national, is administratively removed from the UK under regulation 19(3)(c), then they may be refused admission if it is reasonable to suspect that re-admission will lead to an abuse of a right to reside.

The Border Force officer should follow Border Force guidance for encountering EEA nationals who have previously been administratively removed.

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15.2 In-country encounters

15.2.1 Regulation 19(3)(a)

If you encounter, in-country, an EEA national who has re-entered the UK in the twelve months following their 19(3)(a) removal, you should establish whether the person has been admitted at the border and whether the person is currently exercising Treaty rights.

If the person has been admitted at the border but is not exercising Treaty rights then they can be removed again, even if it is less than three months since they re-entered the country (as they were admitted to the UK on the basis that they would be immediately exercising Treaty rights upon re-entry) unless they have a right of residence in another capacity (e.g. as the family member of another EEA national).

If you suspect that the person has re-entered the UK without being admitted at the UK border or has deliberately circumvented the border such as, by deliberately entering via the Common Travel Area (CTA), then see [section 15.2.3](#).

15.2.2 Regulation 19(3)(c)

Under regulation 21B(3), an applicant who has been administratively removed under regulation 19(3)(c) can make **an application to have that decision set aside, if there has been a material change in the circumstances** which justified that decision. Such an application can only be made from outside the UK. (This also applies if Border Force refuse re-admission to an EEA national who has been removed under either regulations 19(3)(a) or 19(3)(c)).

If you encounter, in-country, an EEA national who has re-entered the UK in the twelve months following their 19(3)(c) removal without making an application to have the decision set aside, you should establish whether the person has been admitted at the Border and whether or not there are reasonable grounds to suspect the fraud and/or abuse will continue.

If the person has been admitted at the Border but there are reasonable grounds to suspect the fraud and/or abuse will continue then they may be removed under

regulation 19(3)(c).

Reasonable grounds for suspicion of abuse can include (but is not limited to):

- EEA national has been removed for participating in, or facilitating, a sham marriage and there has been no significant change in his/her personal circumstances, or there are indications that the person may again attempt to take part in, or facilitate a sham marriage.
- EEA national has been removed for the fraudulent acquisition of rights and there has been no change in their personal circumstances and they are not currently exercising Treaty rights (if they are exercising Treaty rights, then the likelihood of fraudulent acquisition of rights is considerably reduced).
- EEA national has been removed for trying to circumvent the residence requirement and upon re-encounter is not immediately exercising Treaty rights.

If you suspect that the person has re-entered the UK without being admitted at the UK border or has deliberately circumvented the border such as, by deliberately entering via the Common Travel Area (CTA), then see [section 15.2.3](#).

15.2.3 Regulation 24(4)

EEA nationals who are encountered in-country and who have entered the UK in breach of a deportation order or exclusion order fall to be treated as an illegal entrant under Schedule 2 of the 1971 Act in accordance with regulation 24(4) of the EEA Regulations.

From 6 April 2015 EU nationals who **would have** been refused admission on public policy, public security or abuse grounds had they presented at the border may be treated as illegal entrants under Schedule 2 of the 1971 Act in accordance with Regulation 24(4). This power may be used in respect of:

- EEA nationals who have previously been refused admittance at the Border under regulation 19(1) (public policy, public security, public health) or

19(1AB) (abuse of rights) and who are encountered in the UK either having entered clandestinely, or who have deliberately circumvented UK border controls, for example, by deliberately entering via the Common Travel Area. This power may be used if you are satisfied that, or there are reasonable grounds to suspect that, the person has not sought admittance and been admitted at the UK border since their previous refusal.

- EEA nationals who have been removed from the UK under regulation 19(3)(a) or 19(3)(c) but who are encountered in the UK within 12 months of removal and who have entered the UK clandestinely, or who have deliberately circumvented UK border controls, for example, by deliberately entering via the Common Travel Area. This power may be used if you are satisfied that, or there are reasonable grounds to suspect that, the person has not sought admittance and been admitted at the UK border since their removal.
- EEA nationals who are encountered in the UK having entered clandestinely, or using false or fraudulent documentation.

If you are satisfied that the person has not sought admission at the Border, or there are reasonable grounds to suspect they did not, and they were not entitled to be admitted (due to their previous removal or refusal, or as they were attempting entry through fraudulent means) then they may be treated as an illegal entrant under Schedule 2 as per regulation 24(4).

In this case the person should be served with the specific form for EEA Entry in Breach and other Entrants.

If the EEA national is removed as an illegal entrant as per 24(4) then the 30 day notification window in regulation 24(6) does not apply.

If the EEA national is removed as an illegal entrant as per 24(4) then he/she has an out of country right of appeal under regulation 27.

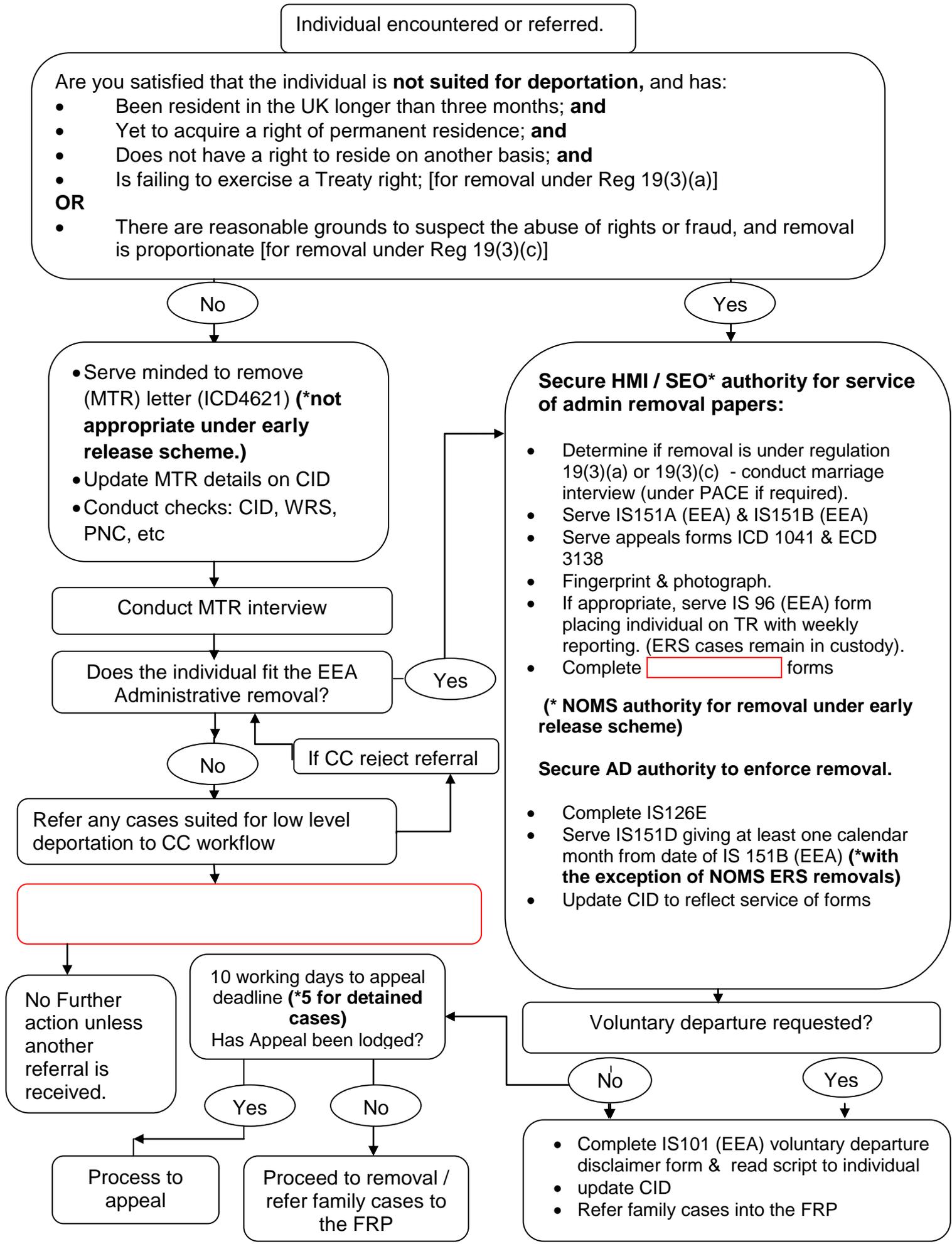
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Annex A: EEA Admin Removal: Essential Actions Checklist

Essential actions checklist: introduction

The flowchart on the following page gives you a summary of the operational process to follow to make a decision on the administrative removal of an EEA national, or a family member of an EEA national.

Essential actions checklist: flowchart



Annex B: EEA specific forms and summary of powers

EEA specific administrative removal forms	
ICD.4621	Minded to remove letter
IS 151A (EEA)	Notice of liability to remove
IS 151B (EEA)	Notification of decision to remove
IS 101 (EEA)	Voluntary departure disclaimer & script
IS96 (EEA)	Notification of temporary admission to a person liable to be detained
ICD.0260 EEA	ERS warning letter
To be allocated	Entry in breach and other illegal entrant (see section 15.2.3)
All forms are located on the CID document generator under 'IS after entry forms, EEA administrative removal'.	

Summary of powers	
Fingerprint	<p>Section 141(7)(c) Immigration and Asylum Act 1999 – following service of an immigration decision (IS151B EEA)</p> <p>Section 141(7)(d) Immigration and Asylum Act 1999 – following detention under paragraph 16 or arrest under paragraph 17</p>
Photograph	<p>Paragraph 18(2), schedule 2</p> <p>Where a person is detained under paragraph 16, any immigration officer, constable or prison officer, or any other person authorised by the Secretary of State, may take all such steps as may be reasonably necessary for photographing, measuring or otherwise identifying him.</p> <p>Prior to detention an IO can only photograph by consent</p>
Arrest	<p>Once a IS151A(EEA) has been served, an IO or constable may arrest under paragraph 17(1) of schedule 2 to the Immigration Act 1971 as a person liable to be detained under paragraph 16(2) of schedule 2</p> <p>There is no other power of arrest</p>
Search	Arrest enables an IO (not constable) to search for relevant

	<p>documents where they have reasonable grounds to believe they may be found:</p> <ul style="list-style-type: none"> • Search person – paragraph 25B of schedule 2 to the Immigration Act 1971 • Search premises – paragraph 25A of schedule 2 to the Immigration Act 1971
Retention of documents	<p>Section 17 of the 2004 Act allows for the retention of a document, once the IS 151A EEA has been served.</p>
Detention	<p>Regulation 24(2) of the 2006 Regulations allows a person to be detained following an administrative removal decision made under those Regulations. Regulation 24(2) applies section 10 of the 1999 Act, section 10(7) of the 1999 Act applies the detention power contained in paragraph 16(2) of schedule 2 to the 1971 Act.</p> <p>Detention must comply with criteria in guidance (Chapter 55 EIG).</p> <p>HMI/SEO authority required to detain AD authority required at 24 hour review</p>

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Annex C: EEA DEPORTATION ADVICE QUESTIONNAIRE

	Question	Answer
1.	Home Office reference number	
2.	Name	
3.	Date of Birth	
4.	Nationality	
5.	Evidence of identity and nationality (e.g., ID card, passport)	
6.	Date of arrival in the UK?	
7.	Have they acquired a permanent right to reside? (e.g. by continuous residence in accordance with the EEA Regulations for at least 5 years)	
8.	Married or in a civil partnership, or in a durable relationship? If yes, give name and nationality of spouse/partner	
9.	Any children? If yes, give name, age and nationality of child(ren)	
10.	Any other UK ties, e.g. family members, employment, education?	
11.	Any known health issues?	
12.	List all known convictions in the UK and abroad. Give the dates of the convictions, the offence and the sentence. Continue on a separate sheet if necessary or scan and send the PNC with the proforma.	
13.	Is there an objective, disclosable assessment of future risk (e.g., from an offender manager)? Give details.	
14.	Other relevant information	
15.	Timing	

Your contact details:

Name		Location	
Phone		Email	

Annex D: Summary of removal powers for individuals involved in EEA marriages of convenience.

Non EEA national	Removal decision
Overstayers, illegal entrants, breach of conditions, and leave by deception), no EEA card granted*.	Standard non-EEA removal procedures in EIG chapter 50 (non EEA) should be followed.
Extant leave (but assisting/ entering/ attempting to enter a marriage of convenience), no EEA card granted*.	Curtailment and simultaneous removal decision by fast track referral to curtailment team, see EIG chapter 30.11.1.1.
Marriage of convenience, EEA card granted*	Regulation 19(3)(a) of EEA Regulations, automatically invalidating the EEA card. Any extant leave must be curtailed after the 19(3)(a) decision, see EIG chapter 30.11.1.1.
Genuine family member but involved in abuse of free movement rights (eg facilitating a marriage of convenience)	Regulation 19(3)(c) of EEA Regulations
EEA national	Removal decision
Involved in abuse of free movement rights (eg facilitating/ entering a marriage of convenience)	Regulation 19(3)(c) of EEA Regulations
ALL cases concerning pending EU registration card applications should be referred to European Casework for refusal, alongside removal.	

Revision History

Date change published	Officer/Unit	Specifics of change	Authorised by	Version number after change
xx/07/12	C Pick, EID	New Guidance to support S10 removals of EEA Nationals	S Dower	V1.0
27/11/2013	C Pick, Enforcement & Returns Operational Policy	Review of revision history, updated restricted sections in 50.5, 50.8., 50.9.2, 50.10, 50.13, and Annex B, Minor formatting updates	K Armstrong, Head of Asylum, Enforcement and Criminality Policy	V2.0
20/12/2013	C Pick EROP Deborah Morrison, EU Free Movement Team	General update and re-ordering of guidance to provide clarity, further amendments to include removal under regulation 19(3)(c) and re-entry restrictions for admin removals	K Armstrong	V3.0
10/06/2014	C Pick EROP	Updated service of appeals forms, reporting wording, link to family returns process, curtailment for marriages of convenience, factual inferences, etc .	K Armstrong	V4.0
13/01/2015	C Pick EROP	Links to, and transfer of content of Section 4.2.1 (curtailment of Non EEA party of sham marriage), into (new chapter) EIG Ch30 Sham marriage guidance / Section 4.2 Clarification of Reg 19(3)(a) invalidating extant EU rights / Section 5.2. clarification of marriage interviews & PACE, Hyperlinks redirected to new horizon site.	K Armstrong	V5.0
02/04/2015	C Pick, EOP L Hustler-Wraight, EU free	Section 4.2. Updated to Marriage interviews and PACE, aligning to IA14 changes, moving table to annex D.	A Perfect, Director of Central Operations	V6.0

	movement	Section 15.2. Updated for IA14 changes, new guidance on regulation 24(4).	J Thompson, Head of Migration Policy	
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