



Home Office

# European Economic Area (EEA) administrative removal

Version 3.0

Instructions for assessing whether to administratively remove a European Economic Area (EEA) national (or a family member of an EEA national).

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# About this guidance

This guidance is part of generic immigration enforcement guidance.

This guidance explains the operational process for the administrative removal of a European Economic Area (EEA) national, or a family member of an EEA national.

This chapter does not cover in detail the deportation of EEA nationals, which includes, but is not limited to:

- abuse of immigration laws such as marriages, civil partnerships and durable partnerships of convenience, and fraudulently obtaining a right to reside
- low level persistent offending
- criminality
- evasion of taxes and duties

You will find full details in the EEA guidance: decisions taken on public policy or public security grounds.

## Contacts

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

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 Guidance - making changes.

## Clearance

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

- version 3.0
- published for Home Office staff on 01 February 2017

## Changes from last version of this guidance

Marriage of convenience sections updated to refer to time limited deportations under regulation 23(6)(B) as detailed in EEA guidance: decisions taken on public policy or public security grounds'.

Proportionality and vulnerability of rough sleepers clarified; update to regulation numbers and removal of sham marriage as admin removal category (now deportation) EEA Regulation changes commencing 1 Feb

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# EEA residency rights

This page tells you about European Economic Area (EEA) residency rights.

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For the purposes of the [Immigration \(European Economic Area\) Regulations 2016](#) (the 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.

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.

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.

The family members of an EEA national are defined in regulation 7 (direct family members) and regulation 8 (extended family members) of the 2016 regulations. See [investigating claims to be family members of EEA nationals](#) section for additional guidance on investigating claims to be an EEA family member.

See misuse of rights and verification of EEA rights of residence for full guidance on rights to reside.

## Initial right to reside: resident less than 3 months

An EEA national has an initial right of residence for 3 months beginning on the date on which they were admitted to the UK (regulation 13).

During this 3 month period, an EEA national must not become an unreasonable burden on the social assistance system of the UK (for example, 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 3 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 3 month period of residence on the grounds of a misuse of a right to reside. See [criteria for administrative removals under regulation 23\(6\)\(c\)](#).

## EEA extended right to reside: resident between 3 months and 5 years

Beyond the initial 3 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

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.

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

See EEA Treaty rights: qualified person flowchart to assist with assessing an individuals' qualified status, and the European guidance on EEA nationals qualified persons for more details on assessing whether someone qualifies under a specific Treaty right category.

See EEA nationals - qualified persons guidance, for the specific criteria for each of the Treaty right categories.

## EEA permanent right to reside: resident over 5 years

The EEA Regulations set out that after a period of 5 years of continuous lawful residence in the UK (in accordance with EEA Regulations that were in force during that 5 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. This right can only be lost through an absence from the UK of more than 2 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 the free movement policy for EEA nationals and their relatives including establishing if there is a permanent right to reside, or on what constitutes lawful residence, please consult the Free Movement Policy team.

## Retained right to reside

There are a number of circumstances, as set out in regulation 10, 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. There is more information in family members of European Economic Area (EEA) nationals who have retained the right of residence.

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# EEA Regulations: removal pathways

This page tells you about recent changes to the European Economic Area (EEA) Regulations, and highlights the various EEA removal pathways.

## On this page:

[EU regulation changes: February 2017](#)

[Identifying EEA removal pathways](#)

[EEA marriages of convenience: removal options](#)

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## EEA regulation changes: February 2017

On 3 November 2016, the EEA Regulations 2006 were revoked and replaced by the [Immigration \(European Economic Area\) Regulations 2016](#) (the regulations).

On the 1 of February 2017, changes to the public policy and public security provisions of the regulations commenced.

These changes require individuals to be removed under a time-limited deportation order (under public policy) rather than through an administrative removal if they:

- have entered into, attempted to enter into, or assisted another person to (attempt to) enter into a marriage of convenience
- have fraudulently obtained an EEA right to reside

As such, guidance on these categories is no longer located within this chapter. Please refer to EEA guidance: decisions taken on public policy or public security grounds' for full details.

## Identifying EEA removal pathways

The regulation changes also re-number the EEA administrative removal regulations, as summarised in the following table:

Category of EEA removal	Regulation number until 31 Jan 2017	Regulation number after 1 Feb 2017
Does not or ceases to have a right to reside	19(3)(a)	23(6)(a)
Public policy, public security or public health	19(3)(b)	23(6)(b)
Misuse of a right to reside	19(3)(c)	23(6)(c)
Entry in breach of a deportation or exclusion order	24(4)	32(4)

## EEA marriages of convenience: removal options

Under EU law, marriages, civil partnerships and durable partnerships of convenience are defined as those contracted for the **sole** purpose of obtaining a right of free movement and residence under the EEA Regulations to which someone would not otherwise be entitled. The important factor in a marriage of convenience is the absence of intention of the couple to create a genuine family unit.

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, EU law rights may have already been obtained outside of the marriage.

If you have reasonable grounds to suspect an individual has either entered into, attempted to enter into, or assisted another person to enter or attempt to enter into, a marriage of convenience, you must identify the most appropriate removal pathway.

The removal pathway for these cases (either administrative removal or a public policy decision) will depend on whether the individual is an EEA national or not, and whether EU rights have previously been recognised by the Home Office.

The following table provides a summary of removal powers for both EEA and non-EEA parties of an EEA marriage of convenience:

Non EEA national	Removal decision
<p>Overstayers, illegal entrants, breach of conditions, and leave by deception.</p> <p>EEA residence card has <b>not</b> been issued, and the individual concerned does not have free movement rights under EU law.</p>	<p><b>Administrative removal decision</b></p> <p>Standard non-EEA administrative removal procedures</p> <p>See: Liability to administrative removal (non EEA) - consideration and notification</p>
<p>Extant leave (but assisting, entering or attempting to enter a marriage of convenience).</p> <p>EEA residence card has <b>not</b> been issued, and the individual concerned does not have free movement rights under EU law.</p>	<p><b>Administrative removal decision</b></p> <p>Curtailment and simultaneous standard administrative removal decision by fast track referral to curtailment team.</p> <p>See: Marriage investigations: Curtailment of leave of non-EEA national: process for referring cases.</p>
<p>Marriage of convenience. EEA residence card issued.</p>	<p><b>Administrative removal decision</b></p> <p>EEA administrative removal procedures under EEA Regulation 23(6)(a) – which</p>

Non EEA national	Removal decision
(for example Home Office previously recognised an EEA right on the basis of a sham relationship, but evidence now suggests that the person never had a right to reside under the EEA Regulations)	<p>automatically invalidates the extant EEA card.</p> <p>Any extant leave must be curtailed after the 23(6)(a) decision.</p> <p>See: Marriage investigations: Curtailment of leave of non-EEA national: process for referring cases.</p>
<b>Genuine family member</b> , but involved in abuse of immigration laws (for example facilitating a marriage of convenience).	<p><b>Public policy decision</b></p> <p>Regulation 23(6)(b) of EEA regulations 2016.</p> <p>See: EEA guidance: decisions taken on public policy or public security grounds.</p>
Involved in a marriage of convenience (for example facilitating or entering or attempting to enter a marriage, civil partnership or durable partnership of convenience).	<p><b>Public policy decision</b></p> <p>Regulation 23(6)(b) of EEA regulations 2016.</p> <p>See: EEA guidance: decisions taken on public policy or public security grounds.</p>

These provisions must be considered alongside other responses such as referral to Criminal and Financial Investigation (CFI) teams for prosecution.

You must refer **all** cases concerning **pending** EU registration card applications to European Casework for refusal, alongside removal.

## EEA administrative removal

The EEA administrative removal criteria falls into 2 main categories under:

- [EEA Regulation 23\(6\)\(a\): no right to reside](#)
- [EEA Regulation 23\(6\)\(c\): misuse of a right to reside](#)

See [EEA administrative removal: powers and criteria](#) for full details.

## EEA public policy and deportation decisions

In addition to the EEA administrative removal criteria, certain types of behaviour considered contrary to the fundamental interests of society (as set out in schedule 1 to the EEA Regulations 2016) may mean the EEA national is more suited to removal under a time-limited deportation order on the grounds of public policy (regulation 27) rather than through an administrative removal.

This behaviour includes:

- abuse of immigration laws such as marriage, civil partnership and durable partnership of convenience and fraudulently obtaining a right to reside
- [low level persistent offending](#)
- criminality
- evasion of taxes and duties

**If you suspect an EEA national may fall into one of these categories, you must investigate fully to determine the appropriate action.**

The criteria and operational processes for these categories are detailed in full within the EEA guidance: decisions taken on public policy or public security grounds.

Additional guidance on considering deportation for low level persistent offending is detailed in the next section.

### Low level persistent offenders: considering deportation

Where information reveals 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.

For more information see EEA guidance: decisions taken on public policy or public security grounds.

During the minded to remove (MTR) interview, you must use the EEA deportation advice questionnaire to investigate whether the individual has any custodial sentences, fines, suspended sentences, and community orders. You must then consider 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
- the pattern of offending indicates escalating seriousness and the potential of future risk of harm
- there is a risk of re-offending
- the individual has acquired a right of permanent residence through 5 years residence in the UK
- the individual has close family ties in the UK

Where you establish that the deportation criteria is likely to be met, you must check CID (under associated cases) to confirm whether the individual is already subject of a national offender management service (NOMS) referral or active criminal case. You must only refer non-NOMS referred cases to Criminal Casework (CC) to pursue deportation.

Referrals must be made on the EEA deportation advice questionnaire to the CC intake team inbox for CC, following approval from a Chief Immigration Officer.

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# EEA administrative removal: powers and criteria

This page tells you about the powers and criteria for conducting a European Economic Area (EEA) administrative removal of an EEA national or their direct family member in accordance with the EEA Regulations.

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## EEA Regulation 23(6)(a): no right to reside

Regulation 23(6)(a) may be used where there is evidence that the person never had, or has ceased to have, a right to reside under the EEA Regulations, for example where:

- an EEA national is no longer a qualified person because they **failed to exercise Treaty rights** as required
- a non-EEA national family member has ceased to be the family member of an EEA national
- the Home Office has previously recognised a non-EEA national as having an EEA right (for example a family permit), but evidence later suggests rights were gained on the basis of a marriage of convenience and,
  - the person is attempting to make use of EU rights they never had

Removals under regulation 23(6)(a) must meet one of the following criteria, either:

- the person must:
  - not yet have acquired a right of permanent residence
  - have no rights to reside on any other basis
  - be failing to exercise a Treaty right or they are the family member of an EEA national who is failing to exercise a Treaty right
  - have been resident in the UK for longer than 3 months if they are an EEA national (this does not apply to EEA family members)
- there is evidence that the person never had a right to reside under the EEA Regulations (for example through a sham marriage)

In all cases, it **must** also be proportionate to proceed with a removal given all the circumstances of the case; see [acting proportionately: EEA administrative removal decisions](#).

Regulation 23(6)(a) applies as if the individual were someone to whom section 10(1)(a) of the 1999 Act applies (EEA Regulation 32(2) refers).

## EEA Regulation 23(6)(c): misuse of a right to reside

Regulation 23(6)(c) may be used where there are reasonable grounds to suspect a misuse of a right to reside under the EEA Regulations.

Removals under regulation 23(6)(c) must meet **at least one** of the following criteria, they:

- have [engaged in conduct which appears to be intended to circumvent the requirement to be a qualified person](#)
- are sleeping rough
- have attempted to enter the UK within 12 months of being removed under regulation 23(6)(a), and are unable to provide evidence that upon re-entry, the conditions for any right to reside, other than the initial right of residence, are met

All 23(6)(c) removals **must** also be seen as [proportionate](#) taking into account all the circumstances of the case; **you must fully record these considerations**.

This regulation may apply even if the EEA national has been in the UK for less than 3 months, or is otherwise exercising Treaty rights.

An appeal against removal under regulation 23(6) (with the exception of a decision taken on the grounds of public policy, public security or public health under 23(6)(b)) will suspend removal.

### 23(6)(c): circumventing qualified person requirements

This provision can only be used in cases of a misuse of a right to reside. That is where there is behaviour that is intended to misuse the initial 3 month right of residence in order to circumvent the requirement to exercise Treaty rights.

For example, an EEA national who repeats a cycle of leaving the UK shortly before their 3 month period expires, only to re-enter in order to benefit from a further 3 month's period of residence, therefore being able to reside indefinitely without exercising Treaty rights.

It is generally **only** considered to be proportionate to make a decision to remove an EEA national on these grounds, where the misuse of rights has taken place more than once. For example, where the EEA national has been encountered more than once for the repeated behaviour, or where the EEA national admits to abusing their initial right of residence multiple times.

If, after questioning, you can reasonably assume that the person has only left the UK for short periods of time in order to deliberately secure additional 3 month periods of initial right of residence. You can consider administrative removal action as it is reasonable to conclude this is a misuse of rights.

If you suspect an EEA national is trying to circumvent the requirement to be a qualified person, but there is insufficient evidence, or it is the first time you have encountered them for this behaviour, you must consider flagging the misuse on CID. Refer to [flagging suspected misuse](#) for full details.

## 23(6)(c): rough sleeping

Rough sleeping may be a misuse of a right to reside, therefore EEA nationals or their family members encountered sleeping rough may be subject to administrative removal under regulation 23(6)(c) where it is appropriate to do so.

A decision to administratively remove an EEA national can be made under regulation 23(6)(c) **only where it is considered proportionate.**

See also [stage 1: determining suitability: maintaining proportionality on decisions](#), and [proportionality examples: rough sleeping](#) for more information.

### **Rough sleeping definition**

The definition of rough sleeping is provided by both the [Department for Communities and Local Government](#) and the [Combined Homelessness and Information Network \(CHAIN\)](#). This sets out individuals are identified as rough sleepers where they are; sleeping, about to bed down (sitting on or in or standing next to their bedding) or actually bedded down, on the street or in other open spaces or locations not designed for habitation, such as doorways, stairwells, parks or derelict buildings.

This does **not** include people in hostels or shelters, people in campsites or other sites used for recreational purposes or organised protest, squatters or travellers.

'Bedded down' is taken to mean either lying down or sleeping. 'About to bed down' includes those who are sitting in or on or near a sleeping bag or other bedding.

### **Removals**

You may consider the administrative removal of EEA nationals or their family members who are sleeping rough, even if they:

- have been in the UK for less than 3 months
- are otherwise exercising Treaty Rights

Individuals removed under regulation 23(6)(c) for rough sleeping will be subject to [re-entry restrictions](#) for 12 months following their removal or voluntary departure, and will attract the standard notification periods for appeal.

Standard EEA administrative removal procedures should be followed, see: [Stage 1: determining suitability for administrative removal](#).

**Individuals who provide evidence that they have ceased rough-sleeping will no longer be liable for removal as a rough sleeper under regulation 23(6)(c).**

If you encounter a rough sleeper who you consider to be a threat to one of the fundamental interests of society as set out in [schedule 1](#) to the EEA Regulations, you must consider whether it is appropriate to remove them on the [grounds of public policy under regulation 27](#).

Examples of behaviour that could be considered to be against the fundamental interests of society includes, but is not limited to:

- a history of low-level persistent criminal offending
- anti-social behaviour such as criminal damage



- drug offences and offences committed to fund a drug or alcohol habit, or committed while under the influence of drugs or alcohol
- acquisitive crime including theft and shoplifting

For more information see: EEA guidance: decisions taken on public policy or public security grounds.

### **Vulnerability, suspected trafficking and children**

In general, encounters with vulnerable rough sleepers should be planned and in co-operation with the local authority's outreach services.

If you encounter a vulnerable foreign national rough sleeper in the field, for example, someone who is dependent on alcohol or drugs, you must refer them to the relevant local authority before making a proportionate decision regarding removal.

In some cases the local authority will have commissioned outreach services tasked to deal with these cases and this will be the most appropriate means of ensuring the right support is provided.

It is important to note that withdrawal from long term alcohol misuse carries a level of risk which may, in some cases, require additional support whilst the individual goes through a period of rehabilitation or withdrawal. As such, if you are considering the EEA national for detention (following service of administrative removals papers), you must refer to the guidance in adults at risk in immigration detention to determine the risk level and appropriate action to take.

See also: Enforcement GI - Medical issues guidance.

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### **Official – sensitive: End of section**

If you encounter in the field, or are managing a case that includes, an individual who appears to be at risk of suicide and self-harm, you must refer to the suicide and self-harm guidance, which details the action you must take. This guidance includes detail on establishing and maintaining good links with local agencies.

If you encounter, or are managing a case that includes, a vulnerable child and you have safeguarding concerns; you must refer to your safeguarding co-ordinator for advice. Details of your local contact can be found on the safeguarding children co-ordinator network list.

If you believe the rough sleeper may be a potential victim of trafficking, you must refer them to the National Referral Mechanism (NRM), following guidance within the trafficking and modern slavery section of the Enforcement general instructions (GIs) - identifying people at risk and human trafficking general guidance.

## Summary of powers: actions supporting EEA administrative removal

The following table provides a summary of the powers available to take supporting actions when conducting an administrative removal of an EEA national, or a family member of an EEA national.

Action	Power
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. 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 them.</p> <p>Prior to detention an immigration officer (IO) can only photograph by consent.</p>
Arrest	<p>Once an 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	<p>Arrest enables an IO (not constable) to search for relevant documents where they have reasonable grounds to believe they may be found.</p> <p>The ability to search a person – paragraph 25B of schedule 2 to the Immigration Act 1971.</p> <p>The ability to search premises – paragraph 25A of schedule 2 to the Immigration Act 1971.</p> <p>See: Search and seizure.</p>
Retention of documents	<p>Section 17 of the 2004 Act allows for the retention of a document, once the IS151A (EEA) has been served.</p>

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# Stage 1: determining suitability

This page tells you about determining suitability for conducting a European Economic Area (EEA) administrative removal.

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Before you take a decision to remove an EEA national or a family member of an EEA national, you must take all **reasonable steps** at that time to ascertain whether the individual fits the EEA administrative removal criteria as detailed under:

- [EEA Regulation 23\(6\)\(a\): no right to reside](#)
- [EEA Regulation 23\(6\)\(c\): misuse of a right to reside](#)

Before proceeding with an EEA administrative removal, you must also determine that a [public policy decision](#) or deportation is not a more appropriate removal option for the case.

EEA administrative removal: essential actions flowchart provides a summary of the process.

## Initial encounters

Although there may be factors present that indicate a misuse of a right to reside, or a failure to exercise a Treaty right, it is important to investigate each case fully on its own merits. For example, cash-in-hand employment or non-payment of UK tax or National Insurance does not automatically mean that the individual is failing to exercise 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.

See EEA Treaty rights: qualified person flowchart to assist with assessing an individuals' qualified status, and the following guidance on assessing Treaty right criteria.

See [EEA nationals - qualified persons](#) guidance, for the specific criteria for each of the Treaty right categories.

If you are satisfied that the individual fits the EEA [administrative removal criteria](#) you should proceed straight to [service of administrative removal papers](#). For example, where a person is clearly not exercising Treaty rights after 3 months' residence or admits to a engaging in a marriage of convenience, during the initial encounter.

However, when you first encounter an individual, they 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. If you need to undertake further investigations, you must invite the individual to a [minded to remove interview](#).

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

### **EEA nationals should not be invited to interview on a systematic basis.**

However, if there is indication, but not strong evidence, of criminality or other penalties, you must 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; you **must** consider whether detention would be appropriate pending a removal or deportation decision.

If you encounter an individual who was the subject of a previous EEA administrative removal that imposed re-entry restrictions, or there is any indication that the EEA national may have circumvented control or entered in breach of a deportation order, you must refer to the [in-country encounters](#) guidance for the correct procedures to follow.

## **Investigating claims to be family members of EEA nationals**

Direct family members have an automatic right to reside under European Union (EU) law and do not have to apply to the Home Office for a residence card; some individuals may seek to misuse these rights.

If you encounter a non EEA national claiming to be the spouse or civil partner of an EEA national, and who therefore claims to be entitled to live and work in the UK, and you have reasonable grounds to suspect that the relationship is not genuine, you should investigate further.

Reasonable grounds could include the context in which you encountered the person, their behaviour or their responses when interviewed. If you have reasonable grounds for suspecting that an immigration offence may have been committed, you may arrest and detain them pending further investigation. This could include a visit to their home address, if appropriate. See: [Examples of grounds for suspicion](#).

If the evidence shows that they are not a direct family member of an EEA national, and have not previously been issued a residence card, then they have no EU rights and are liable to removal in the same way as any other non-EEA national without leave. See: [EEA marriages of convenience: removal options](#).

If the evidence shows that they are a genuine direct family member of an EEA national, they have EU rights and are liable to removal in the same way as any other EEA national if they meet the EEA administrative removal criteria.

## Examples of grounds for suspicion

**Employer visits:** If an employer has conducted right to work checks, it would be usual for a non-EEA family member of an EEA national to have provided their employer with either a valid residence card, (or a derivative residence card, or permanent residence card) or a certificate of application.

If you encounter a non-EEA national during an illegal working visit, and they claim to be a family member but has not provided this evidence (or if you suspect evidence has been forged) this would be reasonable grounds for investigating further.

Where someone was employed with a certificate of application, but this has since lapsed, you should liaise with colleagues in European casework to confirm that the certificate was validly issued and that the subject still has a right to work.

**Visits to domestic premises and other encounters:** On a visit to domestic premises you may encounter a person who claims to be the family member of an EEA national and has not obtained a residence card. Their living arrangements may support or cast doubt on their claim.

Where there are reasonable grounds to suspect the claim is false, you should request proof of the relationship. For example, a genuine passport endorsed with an EEA family permit issued by a UKVI visa section or a genuine marriage certificate. If there is no evidence that their partner or family member is living with them, you should ask them to explain where they are.

Where someone is stopped in the course of a street operation because their behaviour is suspicious, you should ask relevant questions about their claim to have EU law rights. If you have reasonable grounds for suspecting that an immigration offence has been committed, for example, if their responses suggest that their claim to be an EEA family member is fictitious, you may arrest them and interview them further.

## Service of minded to remove letter (interview invitation)

If you need to undertake further investigation you must serve ICD.4621, the minded to administratively remove letter, inviting the individual to interview to provide further details and evidence. This invitation should only be issued when further investigation is required to determine whether removal is appropriate.

You must record the service of the letter on CID. There is no specific time limit between the service of this letter and the date of the interview but you must give a reasonable period of time 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, the reasonable period of notice must reflect the fact that the individual would have already been made aware of the information required.

You must record the service of the minded to remove letter, as it is used to trigger regulation 22 of the EEA Regulations, which allows for [factual inferences](#) to be drawn in the case of non-compliance or lack of evidence.

There are circumstances when the minded to remove interview may not be required.

If, during 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 3 months residence), you do not need to serve the minded to remove letter. Instead, you can proceed straight to service of the notice of liability to removal (IS151A (EEA)) and notification of decision to remove (IS151B (EEA)).

In these cases the verbal statement or other evidence must be recorded in your notebook, reviewed and initialled by both yourself and the individual as part of the interview record.

### **The minded to remove (MTR) interview**

The MTR interview, where required, allows you to gather further information about the individual's residence which will allow you to establish if they fit the EEA administrative removal criteria.

Evidence must include the:

- length of time they have been in the UK
- basis on which they have been residing in the UK, such as:
  - as an EEA national who is exercising a Treaty right in the UK
  - as the family member of an EEA national who is exercising a Treaty right in the UK

You do not have to carry out the MTR interview under caution, or record it 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 is a true record.

You must update CID notes with a summary of the interview, even where the decision to remove is not taken. This ensures officers are aware of previous considerations if the individual is encountered again.

At any point, if you suspect a marriage of convenience may have taken place, you must investigate by conducting a marriage interview, which you only need to carry out in accordance with the Police and Criminal Evidence Act (PACE) if it meets both the following factors:

- a criminal offence is suspected
- it is intended to prosecute

In all cases, you must undertake relevant investigation in conjunction with the appropriate departments, for example:

- the National Document Fraud Unit (NDFU) for suspected fraudulent documents
- Criminal and Financial Investigation (CFI), the police and Criminal Casework for things such as criminal activity

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. This may be Criminal Investigations, the police or even the National Crime Agency.

### Exceptional circumstances

You must also consider any exceptional circumstances that may prevent administrative removal.

### Flagging suspected misuse of a right to reside

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 must consider flagging the suspected misuse on CID so that officers (both in country and at the border) are aware of previous considerations if the individual is encountered again. See: [Re-entry to the UK following an EEA administrative removal](#).

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### Factual inferences: insufficient information and no shows

If insufficient information is 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 must 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 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? It is preferable to use 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 2 occasions without good reason. You must not decide this on the **sole basis** of the failure to comply. You must conduct all reasonable checks of available sources of information to establish whether the person has a right to reside.

Where you determine the administrative removal criteria has been met, proceed to [service of administrative removal papers](#).

### Acting proportionately: EEA administrative removal decisions



Consideration must be given to ensure **actions are proportionate** when deciding to administratively remove an EEA national or the family member of an EEA national.

During the decision making process you **must** consider a number of factors to ensure that removal action remains proportionate in each case. You must balance any impact arising from the individual's misuse of rights, against the impact on the individual.

To do this, each case must be assessed on its individual merits considering the:

- [type of decision being taken](#)
- level of the misuse of a right to reside
- [personal circumstances](#) of the individual including any vulnerabilities
- the implications of limiting the individual's free movement

**You must record your proportionality** considerations within the decision letter, and **on CID**.

If necessary you must get advice from a senior caseworker or Chief Immigration Officer (CIO), or send a referral to the Free Movement Policy team.

### Type of decision being taken

The decision you take will depend upon the status of the relevant person and the proportionality of the decision. An EEA decision is defined within regulation 2 of the EEA Regulations and includes:

- decisions taken to refuse an application for, or revoke, a document issued under EEA law
- decisions to refuse admission to the UK
- making a removal decision in line with regulation 23(6)

### Rough sleepers

When considering whether to take enforcement action against a rough sleeper the decision must be proportionate, and action should only be taken where it is apparent that the rough sleeper is misusing their right to reside.

Factors to consider may include:

- the length of time or the number of occasions the individual has been sleeping rough
- the reasons why the individual is sleeping rough and whether they are taking any steps to find accommodation
- whether there is evidence of anti-social or criminal behaviour

For example an EEA national who continues to sleep rough whilst working to avoid accommodation costs or who is persistently sleeping rough may be deliberately misusing their right to reside. An EEA national who is forced to sleep rough due to a sudden change in circumstances but who is taking steps to find accommodation and exercise Treaty rights would probably not be considered to be abusing free movement rights.

See also [proportionality examples: rough sleeping](#).

## Level of a misuse of a right to reside

Grounds that may be a factor in making a decision to remove under regulation 23(6)(c) could include a number of circumstances, including personal circumstances.

## Personal circumstances

You must take into account personal circumstances when you consider whether a decision under regulation 23(6)(c) is proportionate. This includes regard to the relevant person's:

- age
- state of health
- family ties to the UK
- length of residence in the UK
- social and cultural integration
- economic situation
- need for any support or assistance available if the individual is considered to be vulnerable

## Proportionality examples: failing to exercise Treaty rights

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 3 years and has a child at school here, but fails to hold their required comprehensive sickness insurance.

Although there is evidence that the EEA national is not fulfilling all the requirements for the exercising Treaty rights as a student; 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 misuse of rights may affect the proportionality of any decision to remove.

## Proportionality examples: rough sleeping

Contrast the 2 examples below:

### Example 1

An EEA national has been resident in the UK for 6 months. They are doing cash in hand jobs and are continuing to sleep rough to avoid paying accommodation costs. They have been encountered by the police on a number of occasions for anti-social behaviour. They are fit and healthy and although they are working have no other ties to the UK.

### Example 2

An EEA national has been resident in the UK for 6 months. They are working full time but their circumstances became such that they did not have access to accommodation and so were sleeping on the street. This is the first time they have been encountered sleeping rough and there are no aggravating factors in relation to

anti-social behaviour or criminality. They have evidence to show that they are looking for accommodation and you consider that it is likely in the circumstances that the rough-sleeper will move to accommodation without delay.

Although in both examples the EEA national is sleeping rough, it would not be proportionate to remove in the second example because, while there has been a misuse of rights, it appears unlikely it will continue.

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## Stage 2: actions and considerations

This page tells you about the considerations, authority levels and actions required to proceed with a European Economic Area (EEA) administrative removal.

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### Authority levels

Service of an IS151A (EEA) and IS151B (EEA) must be authorised by a Chief Immigration Officer (CIO) or Higher Executive Officer (HEO). Authority to enforce administrative removal is required by Her Majesty's Inspector (HMI) or a Senior Executive Officer (SEO).

### Service of administrative removal papers

You can proceed to serve administrative removal papers on the individual, after the following actions are complete:

- initial [investigations](#)
- [public policy decisions](#) and deportation have been ruled out
- it is determined [criteria](#) for administrative removal has been met
- it is considered [proportionate](#) to administratively remove

Where suitability for administrative removal has been established, in the absence of the individual, the IS151A (EEA) and IS151B (EEA) can be served to file.

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### Notification periods

Service of the IS151B (EEA) provides a right of appeal by virtue of EEA Regulation 36, and triggers a period of 14 days during which the individual can appeal the decision to administratively remove.

You must also serve relevant appeals papers (ICD.1041 and ECD.3138).

EEA Regulation 32(6) states that the EEA national or their family member must be allowed **one calendar month** (interpreted as 30 days) to leave the UK voluntarily. This begins on the date on which they are served notification of the decision to remove by form IS151B (EEA), before an enforced removal. **Removal must take place as soon as possible following this period of notification.**

Removal cannot take place while any in country appeals are ongoing.

### Summary of notification periods

The following table provides a summary of the notification periods triggered by the service of IS forms.

Form	Notification periods
IS151A (EEA)	Does <b>not</b> initiate any notice period
IS151B (EEA)	<p>Initiates 2 periods of notice that will run simultaneously:</p> <ul style="list-style-type: none"><li>• a 14 day notification for appeals</li><li>• a 30 day (minimum) period of notice during which the individual is invited to leave the UK</li></ul> <p>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, foreign national offender (FNO) cases that will remain in custody whilst being considered under the early removals scheme (ERS).</p>
IS151D	The form must be served <b>at least 72</b> hours before removal, with a removal date <b>at least one</b> calendar month after

Form	Notification periods
	<p>service of the IS151B (EEA).</p> <p>In practice the IS151D form can be served along with the IS151B (EEA) <b>allowing</b> the 72 hours period to run concurrently with the other periods of notice.</p>

## Administrative removal actions

You must complete the following actions:

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- 4) Serve IS151A (EEA) notice of liability to removal.
- 5) Fingerprints must be taken and sent to the Immigration Fingerprint Bureau (IFB).
- 6) Serve IS151B (EEA) notification of decision to remove.
- 7) Serve appeals papers (ICD.1041 and ECD.3138).
- 8) Complete IS126E confirming decision and authorities.
- 9) Serve IS151D removal directions.
- 10) If appropriate, serve IS96 (EEA) form placing individual on temporary reporting (TR) with reporting restrictions. (ERS cases remain in custody).

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## EEA family groups

You must read and follow the families and children guidance in conjunction with this guidance when processing any EEA family group (with or without children aged under 18) who are subject to administrative removal.

## When to use the family returns process (FRP)

The 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 must 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 (for example, where no appeals are received within the 14 days after service of the IS151B (EEA), and any outstanding documentation or other barriers can be resolved in parallel with the returns process)

Where the family has indicated that they wish to leave the UK voluntarily and are willing to sign a disclaimer IS101 (EEA), to withdraw any outstanding notification periods and outstanding applications

Please note, Assisted Voluntary Return for Families and Children (AVRFC) does not apply to EEA family cases.

## Withdrawing decisions

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If the person's circumstances change and they are no longer liable for removal, you **must** do all the following:

- complete an IS217
- complete the relevant CID outcome noting withdrawal of the IS151A (EEA)
- withdraw any restrictions

## Amendments to removal directions

You must treat EEA administrative removals taking place after the 30 day period of notice is complete as a standard administrative removal in terms of the rules for 72 hours of notice for removal. However, as outlined in the [summary of notification periods](#) you can set removal directions at the same time as service of the IS151B (EEA), so the notice periods can run concurrently.

Where amendments are subsequently made to removal directions you must refer to the judicial reviews and injunctions guidance for details about whether or not to grant a second 72 hours period.

## Voluntary departures

Where an individual wishes to make a voluntary departure before removal, following service of an IS151A (EEA) form or an IS151B (EEA) form, you must complete the IS101 (EEA) voluntary departure disclaimer form and retain it on file. The form includes a script which you must read out to the individual.

Removals must take place as soon as reasonably possible. Making flight arrangements give you full guidance on voluntary departures.

## Imposing restrictions whilst in the UK

Any measures restricting an EEA national, or their family members, whilst in the UK need to be proportionate and taken on a case by case basis. They include restrictions on:

- residency
- reporting
- employment



You should record your considerations regarding setting restrictions, on CID notes.

Where required, you should ask the Free Movement Policy team for advice, before you decide to impose restrictions.

## Retention of documents

You do not have powers to retain an EEA national's documents until the point at which you have served an IS151A (EEA). At this point paragraph 17 of the 2004 Act allows for retention of documents to facilitate removal.

However, if the EEA national makes a reasonable request for the document to be returned (for example for a job interview) during the 30 day notification period, you must consider this on a case by case basis. Withholding the document may prevent the individual from exercising Treaty rights.

## Detention

You must **not** detain EEA nationals and their family members whilst a decision to administratively remove is **pending**.

Her Majesty's Inspector (HMI) or Senior Executive Officer (SEO) authority must be given for the removal.

Following the decision to administratively remove (service of the IS151A (EEA)), you may detain individuals at the authority of a CIO or Higher Executive Officer (HEO), only where it is decided upon balance that **both**:

- detention is necessary (for example where an individual is suspected of actively engaging in criminality or there is a clear risk of absconding)
- **the individual meets the current Home Office criteria for detention** - an HMI or SEO must review detention at the 24 hours point

Regulation 23(6)(b) provides an anticipatory power of detention for cases being considered for deportation. Meaning EEA nationals and their family members who meet the criteria may be detained whilst a decision to deport is pending with criminal casework (CC). See: [Deportation of low level persistent offenders](#).

If CC decide **not** to proceed with deportation, detention **may only continue lawfully** if the Home Office both:

- proceed with administrative removal instead
- has served an IS151A (EEA)

There are full details on detention criteria, including guidance relating to the detention of families and children.

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# EEA removals under the early release scheme

This page tells you about European Economic Area (EEA) administrative removals taking place under the early release scheme (ERS).

The ERS is mandatory for all foreign national offenders (FNOs) who are liable to deportation or removal from the UK. Those eligible cannot opt out however, a number of FNOs remain ineligible for the ERS.

Where Criminal Casework (CC) workflow determines that an FNO case is not suitable for deportation under the ERS scheme, they will forward the case to Returns Preparation who must determine if the individual is suitable for EEA administrative removal under the ERS scheme.

## Case suitability

You must follow the ERS process, as detailed in the CC early removal scheme instructions. This includes completing the referral forms and gaining authorisation from the national offender management service (NOMS).

If authority to administratively remove under the ERS scheme is granted by NOMS, you must follow the [service of papers](#) process before referring to the relevant Immigration, Compliance and Enforcement (ICE) team tasked with removal.

Wherever possible, removal must 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 ERS (including eligibility, allocation of cases, and assessment of removability) is detailed in the CC early removal scheme instructions.

## ERS criteria not met, or authority not granted

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

The completed ICD.0260 (EEA) must be faxed to the governor of the prison at which the individual is serving their custodial sentence. The service of the form must be noted on CID.

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# Re-entry to the UK following an EEA administrative removal

This page tells you about the actions to consider when a previous European Economic Area (EEA) administrative removal returns to the UK.

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## Re-entry restrictions

### Re-entry following removal under regulation 23(6)(a)

Any EEA national removed under regulation 23(6)(a) for not exercising Treaty rights, must demonstrate that they will be a qualified person exercising Treaty rights immediately upon re-entry, if they seek to return to the UK in the 12 months following their removal. Where such a person fails to demonstrate this, you may refuse admission to the UK.

### Re-entry following removal under regulation 23(6)(c)

Where an EEA national, or family member of an EEA national, is administratively removed from the UK under regulation 23(6)(c), they may be refused re-admission at the border, if it is reasonable to suspect that it will lead to a misuse of a right to reside.

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## In-country encounters

### Previously removed under regulation 23(6)(a)

If you encounter, in-country, an EEA national who has re-entered the UK in the 12 months following their 23(6)(a) removal, you must 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, you can remove them again even if it is less than 3 months since they re-entered the country. This is because they were admitted to the UK on the basis that they would be immediately exercising Treaty rights upon re-entry. This is unless they have a right of residence in another capacity, for example 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, refer to [EEA illegal entry: regulation 32\(4\)](#)

## Previously removed under regulation 23(6)(c)

Under regulation 26(4), an applicant who has been administratively removed under regulation 23(6)(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 23(6)(a) or 23(6)(c).

If you encounter, in-country, an EEA national who has re-entered the UK in the 12 months following a 23(6)(c) removal, and they have not made an application to have the decision set aside, you must:

- establish whether the person was admitted at the Border
- whether or not there are reasonable grounds to suspect the misuse of rights will continue

If the person has been admitted at the border but there are reasonable grounds to suspect the misuse of rights will continue then you may remove them under regulation 23(6)(c).

Reasonable grounds for suspicion of a misuse of rights can include:

- the EEA national has been removed for sleeping rough and there are:
  - no significant changes in their personal circumstances
  - indications that the person may again attempt to sleep rough
- the 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 through the common travel area (CTA), refer to [EEA illegal entry: regulation 32\(4\)](#).

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# EEA illegal entry: regulation 32(4)

This page tells you about the provisions to remove European Economic Area (EEA) nationals and their family members who have illegally entered the UK.

## EEA illegal entry criteria

Regulation 32(4) provides for EEA nationals and their family members to be treated as illegal entrants under schedule 2 of the Immigration Act 1971 on the grounds:

- of entry in breach of a deportation or exclusion order
- that they would have been refused admission on public policy, public security or abuse grounds had they presented at the border

You may use this power in respect of EEA nationals or their family members who are encountered in the UK. 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 or removal, and at least one of the following criteria are met:

- they entered in breach of a deportation or exclusion order
- they entered using false or fraudulent documentation
- they entered the UK either clandestinely or by **deliberately** circumventing UK border controls, for example:
  - by deliberately entering through the common travel area (CTA) after previously being refused admittance at the border under regulation 23(1) (public policy, public security, public health) or 23(3) (misuse of rights)
- they entered the UK either clandestinely or by **deliberately** circumventing UK border controls, within 12 months of a previous removal under regulation 23(6)(a) or 23(6)(c)

You must serve form ICD.5008 'EEA entry in breach of a DO and other illegal entrants' form.

The 30 day notification window in regulation 32(6) does not apply, and the EEA national is removed as an illegal entrant as per 32(4). They have an out of country right of appeal under regulation 37.

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