

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

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1. Introduction

This guidance gives instruction for assessing whether to administratively remove an EEA national, or a family member of an EEA national. It does not cover deportation of EEA nationals, or a family member of an EEA national, following low level persistent offending; instead, please refer to the CCD EEA Deportation Guidance.

2. EEA nationals and the right to reside

For the purposes of the Immigration (EEA) Regulations 2006 ('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 and conditions as described more fully in the European Casework Instructions (ECIs). They do not require entry clearance or leave to enter the UK.

EEA family members

Where an EEA national is exercising Treaty rights in the UK (see [section 2](#) below for what that means) her/his family members (who may not themselves be EEA nationals) are afforded the same rights of free movement and residence.

A direct family member of an EEA national who is not themselves an EEA national automatically derives a right of residence in the UK through the EEA national provided that the EEA national has a right to reside under the 2006 Regulations. The definition of an EEA family member is set out in full in Regulation 7(1) of the EEA Regulations.

Extended family members of EEA nationals (as defined in regulation 8 of the Regulations) 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 UKBA. Additional information on extended family members is located in ECI Chapter 5.4.

Initial right to reside

The Regulations set out that an EEA national has the right to reside for three months beginning on the date on which s/he is admitted to the UK. During this time s/he does not have to exercise a Treaty right (see [section 2](#) for further details) in order to have a right to reside.

The family member of an EEA national residing in the UK during this three month period will also be entitled to reside in the UK.

We cannot seek to administratively remove an individual who is exercising this initial right to reside; the only exception being where the individual or a member of their family becomes an unreasonable burden on the social assistance system

of the UK. In that case, s/he would cease to have the right to reside under the Regulations and may become removable.

An individual who has been in the UK for less than three months may be deported on grounds of public policy, public security or public health if the relevant test in regulation 21 of the EEA Regulations is met.

Extended right to reside

Beyond the initial three month period an EEA national is entitled to remain in the UK as a 'qualified person'. This means that in order to have a right to reside the individual must be exercising a Treaty right in a particular category; i.e. as a worker, self-employed person, self sufficient, student or a job seeker (see section 2 below for further details). Where an EEA national is residing in the UK as a qualified person their family members will also be entitled to reside in the UK.

An individual may lose this right to reside if s/he ceases to exercise his/her Treaty right. An individual who is resident more than three months (but less than five years – see below) and who is not exercising a Treaty right may be subject to administrative removal. Additionally, as above s/he may be subject to deportation if the relevant test in regulation 21 of the EEA Regulations is met.

Given that the right to reside of a non-EEA national family member of an EEA national is derived from the exercise of treaty rights by an EEA national, a family member's right to reside may also be lost if the EEA national ceases to exercise a Treaty right, or if they cease to be a family member of the EEA national. EEA family members may also be subject to deportation if the relevant test in regulation 21 is met.

Permanent right to reside

The EEA Regulations also set out that after a period of five years of continuous lawful residence in the UK an EEA national or, a family member of an EEA national, who is in the UK acquires a right of permanent residence.

Such a right can only be lost through an absence from the UK of more than two consecutive years. Importantly this means that once a person has acquired a

permanent right to reside they do not need to be exercising a Treaty right (or to be the family member of someone exercising such a right) in order to continue to enjoy that right.

For these purposes 'lawful residence' includes both residence in accordance with the EEA Regulations, but also residence in accordance with earlier versions of those Regulations and lawful residence under domestic law (i.e. with leave) where that residence was for a purpose covered by the EEA Regulations. If your case involves an earlier period of lawful residence then please consult the Euro Ops Policy team.

Individuals with a right of permanent residence cannot be subject to administrative removal. They may, however, be subject to deportation if the relevant test in regulation 21 of the EEA Regulations is met.

EEA nationals, who are in the UK exercising a Treaty right can choose to apply for a registration certificate to evidence their right to reside in the UK, although they are not obliged to do so. A registration certificate is not, in itself, evidence that a person has been exercising Treaty rights since the date of issue. Where held, this document may also assist in determining length of residence in the UK, however, a registration certificate is not, in itself, evidence that a person has been exercising Treaty rights since the date of issue.

Additional information: ECI Chapter 6 – Permanent right to reside.

Retained right to reside

There are number of circumstances 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.

These circumstances are set out in Regulation 10 of the 2006 Regulations. See ECI Chapter 2 - Rights of non-EEA family members of EEA nationals.

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3. EEA Treaty rights

A 'Treaty right' is a right under the Treaty on the Functioning of the European Union (TFEU). The term 'Treaty right' refers to any of the categories below. UKBA officers will need to know what it means to be exercising a Treaty right before considering administrative removal of an EEA national or a family member of an EEA national. These categories are defined in more detail within the EEA Regulations.

Worker

A 'worker' is someone who is in either full-time or part-time employment. The individual must be engaged in economic activity which is genuine and effective rather than on such a small scale to be purely marginal and ancillary. For information on ministers of religion and persons undertaking vocational work, please refer to the section on self-sufficiency below.

Workers from the two States which joined the EU in 2007 (i.e. Bulgaria and Romania – 'A2 nationals') are in a slightly different position. For further details of the regimes which apply to workers from these States, see ECI Chapter 7 - Accession State Nationals.

Jobseeker

In order to qualify as a 'jobseeker', a person must be able to provide evidence that s/he is seeking employment and that s/he has a genuine chance of being engaged in employment.

We would generally expect a jobseeker to obtain employment within six months of beginning her/his search. An individual claiming a right of residence as a jobseeker may also be exercising Treaty rights as a self-sufficient person.

A2 nationals cannot currently exercise a Treaty right as a 'jobseeker'. See ECI Chapter 7 - Accession State Nationals.

Self-employed person

A 'self-employed person' is someone who has established her/himself in the UK in order to pursue activity as a self-employed person. Further information on determination of self-employment status is given on horizon.

Student

A 'student' is a person who is enrolled at a private or public educational establishment for the purposes of following a course of study, including vocational training. A student also requires comprehensive sickness insurance cover in the UK in order to be exercising a Treaty right. See Annex A of ECI Chapter 4 - Registration certificate applications for full details.

Self-sufficient person

A 'self-sufficient person' is someone who has:

- Sufficient resources for themselves and their family members not to become a burden on the social assistance system of the UK; and
- Comprehensive sickness insurance cover in the UK for themselves and their family members.

Examples of self sufficient people

A *retired* person would qualify as self-sufficient if s/he can demonstrate that s/he is in receipt of a pension and/or has sufficient funds (or income from investments) not to become a burden on the social assistance system of the UK.

A person who is doing *voluntary* work and is not receiving a wage may qualify as self-sufficient if (for instance) s/he has funds to support her/himself, or if a charity is meeting her/his living costs.

A person who is a *minister of religion* may not be receiving a wage but will qualify as self-sufficient if her/his living costs are being met by the religious institution employing her/him.

UKBA cannot specify a set amount of money required by an individual in order to be considered self-sufficient. Applications should be assessed on a case-by-case basis and should take into account necessary outgoings such as rent and utility bills.

For guidance on the requirement to hold Comprehensive Sickness Insurance, see Annex A of ECI Chapter 4 - Registration certificate applications for full details.

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4. Considering TA or detention of EEA Nationals

Temporary Admission should not be granted to an EEA National or their family members save for in the exceptional circumstances set out in Regulation 22.

In EEA administrative removal cases, the individual should not ordinarily be detained until the point of removal i.e. until s/he needs to be taken to the airport following service of removal directions. To detain earlier would leave UKBA open to potential accusations of preventing the individual from exercising her/his Treaty rights.

However, with the authority of an HMI/SEO, EEA nationals or their family members can exceptionally be detained where a decision has been taken to remove the person and it is decided upon balance that detention is necessary (i.e. to reduce the risk of absconding) and the individual meets the current UKBA criteria for detention. There should be no barriers to the subject's removal and AD authority given for the removal. An AD should review detention at the 24hr point.

See Chapter 55 of the Enforcement Instructions and Guidance

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5. Imposing restrictions on EEA nationals

Whilst legislation provides the ability for the SSHD to impose restrictions, including restrictions on reporting and employment, on those liable to detention, any measures restricting an EEA national, or a family member of an EEA national, 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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6. Powers for the administrative removal of EEA nationals and their family members

The EEA Regulations say that an EEA national or a family member of an EEA national who has entered the UK may be removed if they do not have/cease to have a right to reside under the EEA Regulations (for more information on the right to reside, see [section 1](#) above on the right to reside)

Where there is evidence that a person is not exercising a Treaty right, you have established that they have been in the UK longer than three months and have yet to acquire a right of permanent residence (or does not have a right to reside on another basis, for example as the family member of a qualified person), that person may not have a right to reside under the EEA Regulations and may therefore be removable.

Where a decision is taken to administratively remove a person under EEA regulation 19(3)(a) (i.e. because the person does not have/has ceased to have a right to reside) EEA regulation 24(2) states that the person is to be treated as if s/he were someone to whom section 10(1)(a) of the Immigration and Asylum Act 1999 applied, and section 10 of that Act is to apply accordingly.

Paragraphs 17 and 18 of Schedule 2 to the Immigration Act 1971 ('the 1971 Act') apply in relation to the detention of such a person, as those paragraphs apply in relation to the detention of a person under paragraph 16 of Schedule 2 to that Act.

However, regulation 24(6) of the EEA regulations states that an EEA national or their family member should be allowed one calendar month to leave the UK, beginning on the date on which s/he is notified of the decision to remove her/him, prior to being removed pursuant to the removal decision; only in duly substantiated cases of urgency of where the person is detained pursuant to the sentence or order of a court does that one calendar month not apply.

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7. Interviews

7.1 Inviting to interview (Minded to administratively remove letter)

Before the decision to remove an EEA national or a family member of an EEA national is made, all reasonable steps should be taken at that time to ascertain whether the individual has been resident for more than three months (but not yet acquired a right of permanent residence) and whether s/he is exercising Treaty rights as defined in [section 2](#).

Where there is concern that the individual is not exercising a Treaty right, s/he should be served with a '**Minded to Administratively Remove**' letter inviting them to an interview, to provide further details about their circumstances so that a decision can be made about whether they have a right to reside under the EEA Regulations. The service of the letter should be recorded locally.

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7.2 The Interview

During the interview you should ask the individual to supply evidence as to:

- The length of time which they have been in the UK for; and
- The basis on which they have been residing in the UK– i.e. 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 [section 2](#) for guidance on the meaning of 'Treaty right').

In practical terms, as EEA nationals have a right of free movement and will therefore not have their passports stamped on entry to the UK, information such as travel tickets, tenancy agreements, or other documents indicating the date on which the EEA national was initially admitted to the UK may assist you when determining length of residence in the UK.

The interview does not have to 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.

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7.3 Insufficient information provided or 'no shows'

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

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7.4 Fraudulent documents, false nationalities, aliases

Where fraudulent documents, false nationalities, aliases are identified during interview; please refer to section 2.2.4 of ECI Chapter 8 - Enforcement action taken against EEA nationals and family members

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8. Workflow into LITs: EEA Foreign National Offenders (FNOs) who do not meet the criteria for deportation

In addition to the standard routes for identifying suitable cases, LITs may receive referrals from other areas (e.g. CCD and NOMS) asking the LIT consider and process cases through to administrative removal where appropriate. There may be occasions where prison establishments refer these cases to CCD Workflow in error and where this occurs, CCD Workflow will forward on to the relevant LIT as soon as possible.

8.1 CCD referrals to LITS

All EEA nationals (or family members of EEA nationals) with a criminal sentence of **12 months or more** will be referred from the prison (NOMS) to CCD Workflow to assess if the case meets criteria for deportation. However, where CCD Workflow determines that criteria for deportation are **not** met, they will forward the case to the relevant Local Immigration Team (LIT) to consider administrative removal.

8.2 National Offender Management Service (NOMS) referrals to LITS

Where an EEA foreign national offender receives a sentence of **less than 12 months**, they will be referred directly to the LIT from the prison (NOMS) by e-mail or fax using the CCD referral form within 5 days of reception following conviction and sentence.

There may be occasions where prison establishments refer these cases to CCD Workflow in error and where this occurs, CCD Workflow will forward on to the relevant LIT as soon as possible.

8.3 Processing CCD or NOMS referrals

When CCD or NOMS referrals have been received the LIT must then consider all known facts to determine if the individual is suitable for EEA Administrative removal or not.

- **Cases suitable for EEA Administrative removal under the Early Release Scheme (ERS)** will be processed by the LIT.

The LIT must continue with the ERS process, as detailed in the CCD Early Removal Scheme Instructions. This includes completion of the referral forms and gaining authorisation from NOMS

Once authority to administratively remove under the ERS scheme has been granted by NOMS, the relevant LIT must proceed with appropriate removal action as detailed in [Section 10](#) below. 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.

- **Where a case is determined as not suitable for EEA Administrative removal or where ERS authority is not granted**, the LIT must issue an ICD.0260 EEA warning letter, and must make sure all aspects of the CID and file record are updated correctly. 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.

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

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9. Removal considerations

Where you are satisfied that the individual has been resident for more than three months (but has not yet acquired a right of permanent residence) and is **not** exercising a Treaty right (or is otherwise the family member of a qualified person); before a decision is made on which, if any, removal action is appropriate consideration must also be given to the following points:

- Any exceptional circumstances that may prevent removal
[See Chapter 53 of the EIG]

- Any available additional information or indicators such as criminal history, fraudulent documents or nationality, failure to show for interviews.
- Any additional information available at that time, i.e. the results of any HMRC checks undertaken.

Following consideration of all known factors, you may encounter cases where you believe the individual meets the low level persistent offending threshold level as described below. In these cases consideration should be given as to whether it is more appropriate for the LIT to pursue deportation rather than administrative removal. **It should be noted that pursuing low level persistent offending deportation (non criteria) cases is the responsibility of the LIT. CCD will only pursue deportation in criteria cases.**

9.1 The low level persistent offending deportation threshold

To assess whether the individual is likely to meet the low level persistent offending deportation threshold, you should consider the following factors:

- Whether the pattern of low level persistent offending is harmful to the public.
- Whether the pattern of offending shows an escalation in seriousness or frequency.
- Whether there is a risk of re-offending.
- Whether the individual has been in the UK for longer than three months, and has not yet acquired a right of permanent residence.
- Whether the individual has close family ties in the UK

These instructions do not give full detail on the deportation of EEA nationals. Advice can be sought from CCD; for further instructions on deportation please refer to the CCD EEA Deportation Guidance.

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9.2. Levels of authority

Where it is determined that the case meets the criteria for **administrative removal**, a Chief Immigration Officer (CIO) must approve the decision, and the case will be progressed by the LIT.

Where a case appears to meet the threshold for **low level persistent offending deportation**, before proceeding, LITS should seek the advice of the Criminal Casework Directorate (CCD) using the CCD Referral proforma located at Annex B. A **CIO** must approve any decision to refer to CCD by sending the completed form to CCD.

As these instructions do not give full detail on the deportation of EEA nationals; advice. Refer to the CCD EEA Deportation Guidance for further instruction.

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10. Service of administrative removal directions on an EEA national

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

Service of an IS151A (EEA) on an EEA national or their family member must be authorised by an HMI / SEO, and Assistant Director (AD) authority is required to enforce an administrative removal on the individual.

Removal directions should be set as soon as possible. Removal cannot take place while any in country appeals are ongoing. Removal should take place no earlier than one calendar month after the service of the IS151 immigration decision, to allow for the one month notification period and the appeals timeline. The only exceptions to the one month period, are FNO cases who will remain in custody whilst being considered under ERS.

Following service of the IS151A (EEA) form the following actions will need to be completed:

- IS126 completed confirming decision and authority
- Subject notified of appeal rights, IS151B (EEA)
- Subject served with removal directions no earlier than one calendar month from the service of the IS151A (EEA) (*except for ERS cases*)
- Subject placed on TR with weekly reporting (*if deemed appropriate, ERS cases remain in custody*).
- Fingerprints & photograph held
- File to local EEA team/EEA officer/LIT
- The subject has 10 days to appeal the decision to administratively remove (or five if s/he is in detention).

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11. Voluntary departures

Where an individual wishes to make a voluntary departure within the one month period or prior to being removed pursuant to the removal decision, there are no time restrictions on the date of removal and this should take place as soon as reasonably possible. The IS101 must be completed and held on file.

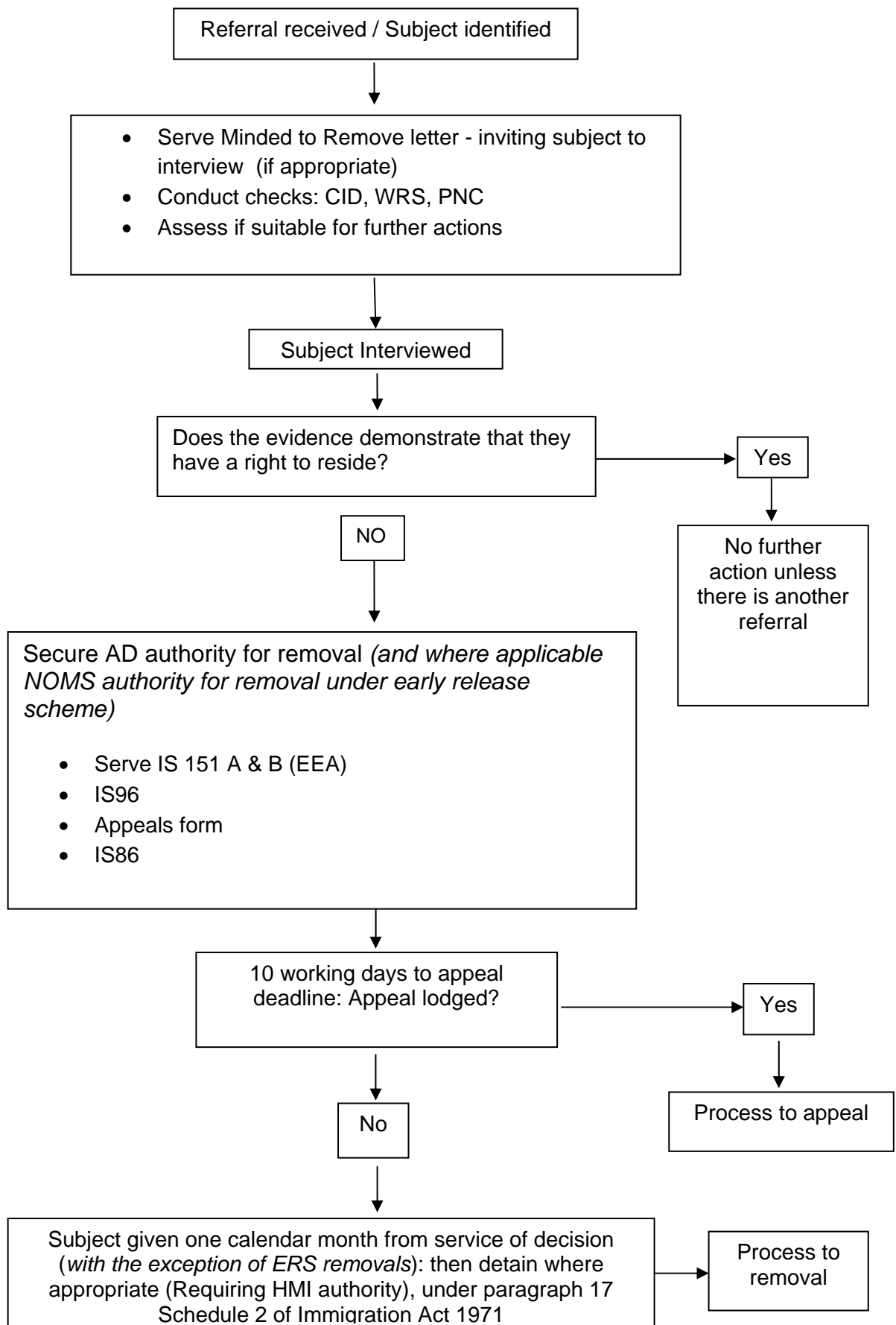
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13. EEA nationals who re-enter/attempt to re-enter the UK

Where an EEA national or a family member of an EEA national is administratively removed from the UK, and seeks re-entry the port IO will follow Border Policy guidance for encountering EEA nationals who have previously been administratively removed.

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Annex A: EEA Admin Removal: Essential Actions Checklist



Annex B:

Deportation: The EEA Regulations

The **Immigration (European Economic Area) Regulations 2006** constitutes the law that implements the right of free movement of EEA nationals and their family members in the UK. The deportation of EEA nationals and family members of EEA nationals is also regulated by the Regulations and associated case law. **Regulation 19(3)(b)** states that such persons may be deported on the grounds of public policy, public security or public health. Any decision to remove or deport EEA nationals and family members of EEA nationals is required to be in accordance with **Regulation 21**.

Regulation 21(5) states that:

- the decision to deport must comply with the principle of proportionality;
- must be based exclusively on someone's personal conduct;
- their conduct must represent a "genuine, present and sufficiently serious threat affecting one of the fundamental interests of society";
- matters isolated from the particulars of their case or which relate to considerations of general prevention do not justify the decision;
- and that previous criminal convictions do not in themselves justify the decision.

CCD's criteria

Since 1 April 2009 CCD's usual criteria for EEA nationals and family members is to consider deportation where they have been sentenced to 12 months imprisonment for certain offences – mainly involving sex, drugs and violence. A full list of the offences is contained in the **CCD European Economic Area (EEA) Cases Instructions**. For all other offences, and for all cases where the conviction date predates 1 April 2009, the criterion is 24 months imprisonment. The sentence must relate to one conviction. In EEA cases, a series of separate sentences cannot be added together to create an aggregate of 12 or 24 months. Regardless of the sentence, the stipulations of **Regulation 21** must be met.

Other cases

Cases that fall outside the above criteria (eg, persistent low-level offenders) can be considered for deportation by LITs provided that the stipulations of **Regulations 21** are met and that any information relied upon is disclosable. Generally, such cases will only be pursued if all the following criteria are fulfilled:

- The pattern of low level persistent offending is harmful to the public.
- The pattern of offending shows an escalation in seriousness or frequency.
- There a risk of re-offending.
- The individual has been in the UK for longer than three months, and has not yet acquired a right of permanent residence.
- The individual has no close family ties in the UK.

If you would like CCD advice on a case you think is suitable for deportation outside the 12 months/24 months criteria, please complete the attached proforma and forward to the CCD EEA SCW Inbox.

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 (eg, ID card, passport)	
6.	Date of arrival in the UK?	
7.	Have they acquired a permanent right to reside? (eg, by continuous residence in accordance with the EEA Regs 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.	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.	Date Offence Sentence
11.	Is there an objective, disclosable assessment of future risk (eg, from an offender manager)? Give details.	
12.	Other relevant information	
13.	Timing	

Your contact details:

Name		Location	
Phone		Email	