

Criminal casework

Exclusion decisions and exclusion orders

Exclusion decisions and exclusion orders

About this guidance

About this guidance Exclusion decisions – non EEA nationals Exclusion orders – EEA nationals Processes used for exclusion decisions and exclusion orders	<p>This guidance tells you the difference between an exclusion decision and an exclusion order and how to deal with criminal casework cases relating to the subject of exclusion.</p> <p>Exclusion decision This can be made against a non-European Economic Area (EEA) national. Exclusion prohibits a person entering the UK if their presence in the UK is deemed not to be conducive to the public good.</p> <p>The power to exclude a person from the UK is currently exercised by the Home Secretary. It is a non-statutory power and potentially very broad. The exclusion remains in place until it is revoked by the Home Secretary.</p> <p>Exclusion is not an immigration decision, as defined by section 82 of the Nationality, Immigration and Asylum Act 2002, and does not have a right of appeal. Non-EEA foreign nationals who are excluded by the Home Secretary may request a judicial review of the decision.</p> <p>Exclusion order This can be made against an EEA national. Under regulation 19(1B) of the EEA Regulations 2006, as amended, the Secretary of State can make an exclusion order against an EEA national or their family members on the grounds of public policy, public security or public health.</p> <p>An exclusion order can only be made against a person who is outside the UK. The effect of the order prohibits the person's admission to the UK. The exclusion remains in place until it is revoked by the Home Secretary.</p> <p>Changes to this guidance – This page tells you what has changed since the previous version of this guidance.</p>	<p>In this section</p> <p>Changes to this guidance</p> <p>Contact</p> <p>Information owner</p> <p>Related links</p> <p>Links to staff intranet removed</p>
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	<p>Contact - This page tells you who to contact for more help if your senior caseworker or line manager can't answer your question.</p> <p>Information owner – This page tells you about this version of the guidance and who owns it.</p> <p>Safeguard and promote child welfare – This page explains your duty to safeguard and promote the welfare of children and tells you where to find more information.</p>	
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Exclusion decisions and exclusion orders

Changes to this guidance

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[Processes used for exclusion decisions and exclusion orders](#)

This page lists the changes to the exclusion decisions and exclusion orders guidance, with the most recent at the top.

Date of the change	Details of the change
16 July 2013	Six month review by the modernised guidance team: <ul style="list-style-type: none">• Minor housekeeping changes.
23 January 2013	Six month review by the modernised guidance team: <ul style="list-style-type: none">• Minor housekeeping changes.
	For previous changes to this guidance you will find all earlier versions in the archive. See related link: Exclusion decisions and exclusion orders - archive.

Related links

See also

[Contact](#)

[Information owner](#)

Links to staff intranet removed

Exclusion decisions and exclusion orders

Exclusion decisions – non EEA nationals

<p>About this guidance</p> <p>Exclusion decisions – non EEA nationals</p> <p>Exclusion orders – EEA nationals</p> <p>Processes used for exclusion decisions and exclusion orders</p>	<p>This section tells criminal casework caseworkers about exclusion decisions for non-European Economic Area (EEA) nationals.</p> <p>Exclusion must only be considered if a person, who meets the criteria for deportation, leaves the UK before the deportation order is made.</p> <p>Decisions on whether a person should be excluded are made by the Home Secretary acting in person. This power is not delegated to officials and each decision requires a submission. The submission must set out what makes that person's presence in the UK undesirable, along with any compassionate factors that need to be taken into account.</p> <p>The Home Secretary needs to be satisfied the individual's presence in the UK would not be conducive to the public good (for example, on the grounds of criminal conviction). This is a similar consideration to the one taken when deciding whether to pursue deportation on conducive grounds. You must balance the public interest in preventing the individual returning to the UK against any compassionate circumstances of the case.</p> <p>For more information see related link: Drafting and submitting an exclusion submission.</p>	<p>In this section</p> <p>Re-entry when the exclusion decision is still in force</p> <p>Considering revocation of exclusion</p> <p>Cancelling leave once an exclusion decision has been agreed</p> <p>Former non-EEA subjects who now benefit under the EEA regulations</p> <p>Related links</p> <p>Drafting and submitting an exclusion submission</p> <p>Links to staff intranet removed</p>
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Exclusion decisions and exclusion orders

Re-entry when the exclusion decision is still in force

<p>About this guidance</p> <p>Exclusion decisions – non EEA nationals</p> <p>Exclusion orders – EEA nationals</p> <p>Processes used for exclusion decisions and exclusion orders</p>	<p>This page tells criminal casework caseworkers what to do if a person tries to re-enter the UK when there is still an exclusion decision in force.</p> <p>Although there is no time limit on exclusion, its purpose is to replicate the effect of deportation, and prevent the excluded person from returning to the UK for a similar period if they were deported.</p> <p>An exclusion decision continues to apply until it is revoked by the Home Secretary. Applications for visas or for entry at a port must be refused.</p> <p>Paragraph 320(6) of the Immigration Rules provides a mandatory refusal of entry clearance or leave to enter if the person is the subject of an exclusion decision.</p> <p>There may be a non-suspensive right of appeal against the refusal of entry clearance or leave to enter (depending on the nature of the application) which, in the case of those seeking entry, can be brought in country by raising human rights and/or asylum issues.</p> <p>Although it is not an offence for the subject of an exclusion decision to enter the UK while the decision is still in force, you must determine how the individual obtained entry.</p> <p>If material deception was used (for example, a forged passport or a false identity) the person is removed as an illegal entrant.</p> <p>If entry was granted because:</p> <ul style="list-style-type: none">• the person's details were not properly entered on Home Office systems, following the Home Secretary's decision to exclude, or• Home Office systems were not fully checked by the visa officer or Border Force officer <p>the person can only be removed through deportation, as the exclusion decision has no</p>	<p>Related links</p> <p>Considering revocation of exclusion</p> <p>Cancelling leave once an exclusion decision has been agreed</p> <p>Former non-EEA subjects who now benefit under the EEA regulations</p> <p>Related links</p> <p>Links to staff intranet removed</p>
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	effect while the person is in the UK.	
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Exclusion decisions and exclusion orders

Considering revocation of exclusion

About this guidance Exclusion decisions – non EEA nationals Exclusion orders – EEA nationals Processes used for exclusion decisions and exclusion orders	<p>This section tells you what to take into account when considering the revocation of an exclusion decision.</p> <p>You must consider all circumstances surrounding the cases. These must include:</p> <ul style="list-style-type: none">• the grounds on which the exclusion decision was made• the representations made to support the request for revocation• the interest of the community including the maintenance of an effective immigration control and prevention of further crime (and the victim).	<p>In this section</p> <p>Cases that meet the deportation criteria</p> <p>Cases that do not meet the deportation criteria</p> <p>Related links</p> <p>Re-entry when the exclusion decision is still in force</p> <p>Cancelling leave once an exclusion decision has been agreed</p> <p>Former non-EEA subjects who now benefit under the EEA regulations</p> <p>Links to staff intranet removed</p>
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Exclusion decisions and exclusion orders

Cases that meet the deportation criteria

<p>About this guidance</p> <p>Exclusion decisions – non EEA nationals</p> <p>Exclusion orders – EEA nationals</p> <p>Processes used for exclusion decisions and exclusion orders</p>	<p>This page tells you what to do for considerations to revoke exclusion decisions where the person meets the criteria for deportation.</p> <p>The policy for considering applications to revoke exclusion is set out in paragraphs 390-391 of the Immigration Rules.</p> <p>If a conviction is capable of being ‘spent’ under the Rehabilitation of Offenders Act 1974 (sentenced to 30 months or less) continued exclusion for a period of no less than 10 years since the making of the exclusion decision is appropriate.</p> <p>Applications for revocation must be refused unless:</p> <ul style="list-style-type: none">• this would be in breach of the Human Rights Convention or the Convention and Protocol Relating to the Status of Refugees• the situation has changed significantly since the exclusion decision was made• fresh information not available at the time of the decision shows a significant change in circumstances. <p>The fact that a conviction is ‘spent’ at the time of application is not by itself sufficient to justify revocation if 10 years has not passed since the exclusion decision was made.</p> <p>If a criminal conviction can never be spent (sentences of 30 months or more) continued exclusion from the UK is appropriate.</p> <p>Applications for revocation must be refused unless this would be in breach of the Human Rights Convention or the Convention and Protocol Relating to the Status of Refugees, or where other exceptional circumstances apply.</p> <p>Under the terms of Rehabilitation of Offenders Act 1974, the time taken for a criminal conviction to be ‘spent’ can vary from six months (low level non-custodial sentence normally</p>	<p>Related links</p> <p>Cases that do not meet the deportation criteria</p> <p>Links to staff intranet removed</p>
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	outside of criminal casework criteria) to no time limit, depending on the severity of the sentence and age of the criminal at the time of their conviction.	
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Exclusion decisions and exclusion orders

Cases that do not meet the deportation criteria

About this guidance Exclusion decisions – non EEA nationals Exclusion orders – EEA nationals Processes used for exclusion decisions and exclusion orders	<p>This page tells you what to do for considerations to revoke exclusion decisions where the person did not meet the criteria for deportation but left the UK under the terms of the facilitated return scheme (FRS).</p> <p>Before 2010, exclusion decisions were routinely made in cases where a returnee did not meet the criteria for deportation but left the UK under the terms of the FRS. Exclusion is no longer applied in these cases.</p> <p>Paragraph 320(7)(B)(iv) of the Immigration Rules provides for a mandatory refusal of entry clearance for a minimum of two years for persons who left the UK under the terms of a government sponsored scheme, such as FRS:</p> <ul style="list-style-type: none">• within six months of the date when they were given notice of the removal decision, or• no more than six months after the date when the person no longer had a pending appeal, whichever is the later. <p>Otherwise the minimum period for mandatory refusal is five years.</p> <p>Under paragraph 320(7)(C) these exclusion periods do not apply if entry is being sought:</p> <ul style="list-style-type: none">• as a spouse, civil or other partner• as a parent, grandparent or other dependent relative for access to a child, or• where the person was under 18 at the time of their last breach of the rules. <p>Even where paragraph 320(7) (C) applies, the application must still meet the requirements of the rules for entry in that category. Entry may also be refused on the grounds it is conducive to the public good under rule 320(19) on the basis of a previous breach of the rules and in the case of foreign national offenders (FNOs), their offence(s).</p> <p>As a matter of policy, and to make sure there is consistency with other non-criteria cases</p>	Related links Cases that meet the deportation criteria Links to staff intranet removed
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	<p>leaving under the terms of FRS, the minimum period before an exclusion decision is revoked replicates the provisions of the relevant Immigration Rules.</p> <p>So, in non-criteria cases, continued exclusion is appropriate where less than two or five years (depending on when the person left the UK) has passed since the exclusion decision was made. Consideration must be given to the individual facts of each case, including:</p> <ul style="list-style-type: none"> • the impact on article 8 of the European Convention of Human Rights on any family in the UK, but not on the applicant as article 8 is not extra-territorial, and • any reasons why the family cannot join the FNO in their home country. <p>If an excluded person applies in one of the categories listed under 320(7)(C) of the rules, but they were advised (usually as a condition of leaving under FRS) that a consequence of accepting FRS might be exclusion from the UK, this will, in most cases be enough to justify maintaining the decision to exclude for the minimum period.</p> <p>Applications will be refused unless refusing to revoke the exclusion decision would result in:</p> <ul style="list-style-type: none"> • a breach of the Home Office's obligations under the European Convention of Human Rights or the Convention and Protocol Relating to the Status of Refugees, or • the applicant's circumstances have changed significantly since the exclusion was made. <p>Any proposal must demonstrate why it is proportionate and/or reasonable to revoke the exclusion and if as a result of the revocation the FNO is able to return to the UK in the near future.</p>	
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Exclusion decisions and exclusion orders

Cancelling leave once an exclusion decision has been agreed

<p>About this guidance</p> <p>Exclusion decisions – non EEA nationals</p> <p>Exclusion orders – EEA nationals</p> <p>Processes used for exclusion decisions and exclusion orders</p>	<p>This page tells you about cancelling any leave once an exclusion decision is agreed.</p> <p>The power to cancel an excluded persons leave (including indefinite leave) while they are outside the UK comes from article 13(7) of the Immigration (Leave to Enter or Remain) Order 2000.</p> <p>Cancellation under article 13(7) also causes any entry clearance that conferred this leave to cease to have effect. This does not apply to multi entry visas or entry clearance that has not yet been used to enter the UK, which must be revoked by an entry clearance officer (ECO).</p> <p>Article 13(7) (a) enables a Border Force officer to cancel leave to enter. Article 13(7) (b) enables the Secretary of State (or case owner on their behalf) to cancel leave to remain.</p> <p>You can find details on cancelling leave in paragraph 321A (4) of the Immigration Rules. For more information, see related link.</p> <p>Rights of appeal</p> <p>There is no right of an appeal against the decision to exclude a person from the UK, as it is not an immigration decision. But a person can appeal against the actual decision to cancel any leave, based on that exclusion.</p> <p>For the purpose of an appeal, the cancellation of leave is treated as a decision under section 82(2) (e) of the Nationality, Immigration and Asylum Act 2002. As long as the person is outside the UK, the right of appeal can only be brought from outside the UK.</p> <p>Following the Court of Appeal’s decision in the case of MK in 2011, a person can appeal from in the UK if they return to the UK within 10 days of being notified their leave has been cancelled. The court determined that cancelling leave gives rise to continuing leave until any appeal is determined.</p>	<p>Related links</p> <p>Re-entry when the exclusion decision is still in force</p> <p>Considering revocation of exclusion</p> <p>Former non-EEA subjects who now benefit under the EEA regulations</p> <p>Links to staff intranet removed</p>
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There is no appeal against the revocation of an entry clearance by an ECO under paragraph 30A of the Immigration Rules.

Process

Once the Home Secretary decides to exclude a person with valid leave, the person is told in writing of:

- their exclusion
- the decision to cancel leave, and
- any appeal rights.

If there is no reliable address for the person, any notice, or letter, must be placed on file and issued or served if the person or their details come to light in the future. The cancellation of leave takes immediate effect even if the person cannot be notified of it.

Restricted – do not disclose – start of section

The information in this page has been removed as it is restricted for internal Home Office use only.

Restricted – do not disclose – end of section

A person with refugee status

If the person being considered for exclusion is a recognised refugee in the UK, this status needs revoking before any exclusion decision can take effect. See related link: Criminal casework: Asylum.

Exclusion decisions and exclusion orders

Former non-EEA subjects who now benefit under the EEA regulations

<p>About this guidance</p> <p>Exclusion decisions – non EEA nationals</p> <p>Exclusion orders – EEA nationals</p> <p>Processes used for exclusion decisions and exclusion orders</p>	<p>This page tells you about exclusion decisions made for former non-European Economic Area (EEA) nationals who now benefit under the EEA regulations as an EEA national.</p> <p>As with deportation orders made under the 1971 Act there are cases where the subject of a non-EEA exclusion decision now benefits under the EEA regulations.</p> <p>An exclusion decision properly taken in respect of a non-EEA national ceases to have effect if the individual becomes the husband, wife or partner of an EEA national or becomes an EEA national or dual EEA national.</p> <p>Consideration must be given to whether an exclusion order must be made under the EEA regulations. This is a higher test than for non-EEA cases and cannot be based solely on the person's previous criminality. It must demonstrate the person's exclusion on public policy is justified on the grounds they represent a genuine, present and sufficiently serious threat as set out in regulation 21(5) (c) of the Immigration (EEA) Regulations 2006.</p> <p>Further checks are only needed if there is evidence further offences may have been committed abroad. This can be checked with Interpol through the Overseas Visitors Records Office (OVRO).</p> <p>If revocation of an exclusion decision is recommended, a submission must be sent to the Home Secretary through the usual channels to seek authority to revoke that decision. In cases where the person now benefits under the terms of the EEA regulations the submission must explain why exclusion under the terms of the EEA regulations is justified, or if not the reasons why.</p> <p>If agreed, the normal process for notifying the applicant or their representative must be followed.</p>	<p>Related links</p> <p>Re-entry when the exclusion decision is still in force</p> <p>Considering revocation of exclusion</p> <p>Cancelling leave once an exclusion decision has been agreed</p> <p>Links to staff intranet removed</p>
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Exclusion decisions and exclusion orders

Exclusion orders - EEA nationals

About this guidance Exclusion decisions – non EEA nationals Exclusion orders – EEA nationals Processes used for exclusion decisions and exclusion orders	<p>This section tells you about exclusion orders which only apply to people who benefit from free movement rights, as set out in the European Economic Area (EEA) Regulations 2006, as amended.</p> <p>On 1 June 2009 the Immigration (European Economic Area) (Amendment) Regulations 2009 (SI 2009 No 1117) came into force (amending the Immigration (Economic Area) Regulations 2006 (SI 2006 No 1003). This allows the Home Secretary to exclude EEA nationals and members of their families by making an exclusion order. The relevant provision is regulation 19(1B) of the 2006 Regulations (as inserted by paragraph 6 (a) of the 2009 Regulations).</p> <p>The test is higher than the one for non-EEA nationals, as the Home Secretary needs to be satisfied the EEA national constitutes a threat to public policy, public security or public health.</p> <p>Regulation 21 (5) of the 2006 Regulations sets out the threshold that needs to be met before an EEA national, or member of their family, can be excluded:</p> <ul style="list-style-type: none">• The decision must be proportionate.• The decision must be based solely on the personal conduct of the person concerned.• The personal conduct of the individual must represent a genuine, present and sufficiently serious threat affecting a fundamental interest of society. Whatever the person has done in the past, there needs to be evidence of a present threat.• Matters isolated from the particulars of the case or a person's previous criminal convictions do not in themselves justify the decision. <p>Although an exclusion order can only be made against a person who is outside the UK at the time, there may be cases where an EEA national or family member is resident in the UK despite being abroad at the time the order is made. In these circumstances, the considerations set out in regulation 21(6) must be taken into account. These are the:</p>	<p>In this section</p> <p>Submitting a recommendation to make and exclusion order</p> <p>Process for notifying a person of an exclusion order</p> <p>Breaching an exclusion order made under the EEA Regulations.</p> <p>Revocation of exclusion orders (EEA nationals)</p> <p>Additional checks to be made in EEA cases</p> <p>Right of appeal against a refusal to revoke an exclusion order</p> <p>Related links</p> <p>Links to staff intranet removed</p>
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	<ul style="list-style-type: none"> • person's age • person's state of health • family and economic situation of the person • person's length of residence in the UK • person's social and cultural integration into the UK, and • extent of the person's links with their country of origin. <p>If an EEA national or family member acquires a right to reside permanently in the UK (under regulation 15 of the 2006 Regulations) an exclusion order can only be made on serious grounds of public policy or public security.</p> <p>A continuous period of 10 years' residence means an exclusion order can only be made on imperative grounds of public policy or public security.</p> <p>For more information see chapter 8 of the related link: European casework instructions.</p>	
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Exclusion decisions and exclusion orders

Submitting a recommendation to make an exclusion order

About this guidance Exclusion decisions – non EEA nationals Exclusion orders – EEA nationals Processes used for exclusion decisions and exclusion orders	<p>This page tells criminal casework caseworkers how to submit a recommendation for an exclusion order.</p> <ul style="list-style-type: none">• The submission must show proper consideration has been given to all relevant factors in order for the Secretary of State to be satisfied they are justified in making an exclusion order.• The submission must be accompanied by the prepared notice of decision to make an exclusion order ICD.4079, for use with appeals to the First-tier Tribunal (FTT) (Immigration and Asylum Chamber).• The notice of decision to make an exclusion order must explain the reasons for the person's exclusion from the UK and, where relevant, include details of any certification. The notice must be left undated and unsigned at this stage.• If the Secretary of State agrees to make the exclusion order, the date confirmation is received is the date you must enter on the notice of decision to make an exclusion order. This will also be the date the order takes effect. The completed notice of decision to make an exclusion order is the exclusion order. <div style="border: 2px solid red; padding: 5px; text-align: center;"><p>Restricted – do not disclose – start of section</p><p>The information in this page has been removed as it is restricted for internal Home Office use only.</p><p>Restricted – do not disclose – end of section</p></div> <p>For more information see related link: Drafting and submitting an exclusion submission.</p>	Related links Process for notifying a person of an exclusion order Breaching an exclusion order made under the EEA Regulations Revocation of exclusion orders (EEA nationals) Additional checks to be made in EEA cases Right of appeal against a refusal to revoke an exclusion order Drafting and submitting an exclusion submission.
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Process for notifying a person of an exclusion order

About this guidance Exclusion decisions – non EEA nationals Exclusion orders – EEA nationals Processes used for exclusion decisions and exclusion orders	<p>This page tells you the process for notifying a person of an exclusion order.</p> <p>Article 30 of the Free Movement Directive requires a person to be notified in writing 'precisely and in full' of any decision taken against them on grounds of public policy or public security.</p> <p>The original exclusion order must be placed on file and a copy sent to the individual, together with the relevant appeal form and guidance for:</p> <ul style="list-style-type: none">• out of country appeals use appeal form IAF-3 (also known as ICD.2163)• in the UK (in-country) appeals use appeal form IAF-1 (also known as ICD.1041). <p>If the person's whereabouts are unknown or if a notice sent to the last known address is returned as 'Gone away' or 'Not known at this address', the notice must be served to the file and recorded in a minute. If the person's whereabouts later become known, the notice and relevant appeal forms must be served on the person at that point (the notice must not be re-dated).</p> <p>Right of appeal</p> <p>A person has the right to appeal against a decision to make an exclusion order against them (under regulation 26) but that right of appeal can only be exercised outside of the UK (regulation 27(1)(aa)), subject to the following exceptions.</p> <p>If the person is in the UK whilst an appeal could be brought, having entered or sought to enter in breach of the order, they will be entitled to appeal from within the UK if:</p> <ul style="list-style-type: none">• they hold a valid European Economic Area (EEA) family permit, registration certificate, residence card, document certifying permanent residence or permanent residence card on their arrival in the UK, or can otherwise prove they were resident in the UK (regulation 27(2)(a))	<p>Related links</p> <p>Submitting a recommendation to make and exclusion order</p> <p>Breaching an exclusion order made under the EEA Regulations.</p> <p>Revocation of exclusion orders (EEA nationals)</p> <p>Additional checks to be made in EEA cases</p> <p>Right of appeal against a refusal to revoke an exclusion order</p> <p>Links to staff intranet removed</p>
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	<ul style="list-style-type: none"> • they were detained or temporarily admitted or released while liable to detention but on the date the notice of the decision to refuse to admit them is served they have been in the UK for at least three months (regulation 27(2)(b)), they appeal against the decision on human rights or asylum grounds, unless the Secretary of State certifies the ground of appeal is clearly unfounded (regulation 27(2)(c)). <p>If the person arrives in the UK while subject to an extant exclusion order they will either fall to be refused admission or be removable as an illegal entrant.</p> <p>If the person arrives in the UK while an appeal could be brought against the decision to make an exclusion order, and that appeal is in country for the reasons explained above, any appeal against a decision to refuse admission or to remove as an illegal entrant must be dealt with alongside the appeal against the decision to make an exclusion order.</p> <p>Where the person is entitled to bring an in UK (in-country) right of appeal against the decision to make an exclusion order, they must be served with an ICD.4075 for appeal to the First-tier Tribunal (FTT) or ICD.4078 for appeal to the Special Immigration Appeals Commission (SIAC) - which will predominately be cases involving national security and foreign government bodies. The original decision must not be withdrawn.</p> <p>Residence documents</p> <p>If a person who is being considered for exclusion holds a valid registration certificate, residence card, document certifying permanent residence or permanent residence card, the document must be revoked on grounds of public policy or public security in line with the decision to make an exclusion order.</p> <p>Where the holder is in the UK, a decision to revoke any of these documents allows the person to appeal in UK (in-country). In exclusion order cases the person must be outside the UK when the decision to revoke is taken.</p> <p>As permitted by article 31(4) of the Free Movement Directive, the UK may:</p> <ul style="list-style-type: none"> • exclude a person from its territory pending an appeal, and • prevent the person from submitting their defence in person, if their appearance might 	
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	<p>cause serious troubles to public policy or public security or where the appeal concerns a denial of entry to the territory.</p> <p>Although the appeal against the revocation decision may not directly concern a denial of entry to the UK, the exclusion decision clearly does. In certain cases it is also likely the risks to public policy or public security justify preventing the person from appealing in UK.</p> <p>If the person manages to return to the UK and is either encountered at port or inside the UK, they can exercise an in the UK (in-country) right of appeal against revocation.</p>	
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Exclusion decisions and exclusion orders

Breaching an exclusion order made under the EEA Regulations

About this guidance Exclusion decisions – non EEA nationals Exclusion orders – EEA nationals Processes used for exclusion decisions and exclusion orders	<p>This page tells you about re-entry or being in the UK when an exclusion order is still in force.</p> <p>A European Economic Area (EEA) national or family member who returns to the UK while an exclusion order is still in force will either be:</p> <ul style="list-style-type: none">• stopped on entry by a Border Force officer before they pass through immigration control, or• encountered after entry, having managed to pass through or circumvented the control on arrival. <p>On entry</p> <p>If a person is stopped on entry they are deemed to have sought to enter in breach of an exclusion order and the on entry procedures, set out in general grounds for refusal pages of the related link: Refusing leave to enter – general guidance. The on entry procedures will be carried out by the port Border Force officer(s).</p> <p>After entry</p> <p>An EEA national or their family member who enters the UK in breach of an extant exclusion order will be removable as an illegal entrant. The right of appeal against the decision to remove is in regulation 26. As a result of regulation 27(1)(d) this will be an out of country right of appeal unless 27(3) applies. For example, the person raises asylum or human rights grounds that are not certified as clearly unfounded.</p>	<p>Related links</p> <p>Submitting a recommendation to make and exclusion order</p> <p>Process for notifying a person of an exclusion order</p> <p>Revocation of exclusion orders (EEA nationals)</p> <p>Additional checks to be made in EEA cases</p> <p>Right of appeal against a refusal to revoke an exclusion order</p>
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Exclusion decisions and exclusion orders

Revocation of exclusion orders (EEA nationals)

About this guidance Exclusion decisions – non EEA nationals Exclusion orders – EEA nationals Processes used for exclusion decisions and exclusion orders	<p>This page tells you what to take into account when considering the revocation of exclusion orders.</p> <p>Regulation 24A of the Immigration (European Economic Area) Regulations 2006, as amended, stipulates the exclusion order remains in force until it is revoked, but also contains provisions to allow the Home Secretary to revoke an exclusion order where appropriate and an application for revocation is made.</p> <p>The regulation stipulates:</p> <ul style="list-style-type: none">• the application must set out the material change in circumstances relied upon by the applicant• the application must be made from outside the UK• there is no time limit for applications• the order will be revoked if it is no longer justified on the grounds of public policy, public security or public health in accordance with regulation 21• applications must be decided within six months of being submitted. <p>When considering applications to revoke you need to consider whether the factors which led to the decision to exclude continue to apply, for example:</p> <ul style="list-style-type: none">• Does the decision continue to be in the public interest?• Is it in accordance with the factors in 21(5) and 21(6) of the Immigration (European Economic Area) Regulations 2006? <p>This can be difficult to assess and the decision must be based on:</p> <ul style="list-style-type: none">• the seriousness of the original offence• whether the original offence has become spent• the most recent OASys (Offender Assessment system) assessment of future behavior,	<p>Related links</p> <p>Submitting a recommendation to make and exclusion order</p> <p>Process for notifying a person of an exclusion order</p> <p>Breaching an exclusion order made under the EEA Regulations.</p> <p>Additional checks to be made in EEA cases</p> <p>Right of appeal against a refusal to revoke an exclusion order</p> <p>Links to staff intranet removed</p>
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	<p>and</p> <ul style="list-style-type: none">• any evidence of criminal behaviour since the exclusion decision was taken. <p>Whilst the period of continued exclusion is not stipulated under the regulations, the policy is to apply provisions similar to those in paragraphs 390-391 of the Immigration Rules, subject to the additional need in European Economic Area (EEA) cases to demonstrate the person is a continuing threat.</p>	
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Exclusion decisions and exclusion orders

Additional checks to be made in EEA cases – Restricted not for disclosure

About this guidance Exclusion decisions – non EEA nationals Exclusion orders – EEA nationals Processes used for exclusion decisions and exclusion orders	<div data-bbox="472 300 1682 347">Restricted – do not disclose – start of section</div> <div data-bbox="472 347 1682 1422">The information in this page has been removed as it is restricted for internal Home Office use only.</div>	Related links Submitting a recommendation to make and exclusion order Process for notifying a person of an exclusion order Breaching an exclusion order made under the EEA Regulations. Revocation of exclusion orders (EEA nationals) Right of appeal against a refusal to revoke an exclusion order Links to staff intranet removed
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	<div>The information in this page has been removed as it is restricted for internal Home Office use only.</div> <div>Restricted – do not disclose – end of section</div>	
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Exclusion decisions and exclusion orders

Right of appeal against a refusal to revoke an exclusion order

<p>About this guidance</p> <p>Exclusion decisions – non EEA nationals</p> <p>Exclusion orders – EEA nationals</p> <p>Processes used for exclusion decisions and exclusion orders</p>	<p>This page tells you the rights of appeal given when refusing to revoke an exclusion order of a European Economic Area (EEA) national.</p> <p>A refusal to revoke an exclusion order attracts a right of appeal (under regulation 26 of the Immigration (EEA) Regulations 2006) but that appeal may only be brought from outside the UK (regulation 27(1)(b)).</p> <p>The relevant refusal form is ICD.4080.</p>	<p>Related links</p> <p>Submitting a recommendation to make and exclusion order</p> <p>Process for notifying a person of an exclusion order</p> <p>Breaching an exclusion order made under the EEA Regulations.</p> <p>Revocation of exclusion orders (EEA nationals)</p> <p>Additional checks to be made in EEA cases</p> <p>Links to staff intranet removed</p>
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Exclusion decisions and exclusion orders

Processes used for exclusion decisions and exclusion orders

About this guidance Exclusion decisions – non EEA nationals Exclusion orders – EEA nationals Processes used for exclusion decisions and exclusion orders	This section tells you the processes used for exclusion decisions and exclusion orders.	In this section Drafting and submitting an exclusion submission Levels of authority Requests to revoke an exclusion decision or exclusion order Invalid exclusion decisions and exclusion orders Actions to take when revoking an exclusion decision or exclusion order Updating CID when revocation of exclusion decision or order is agreed Updating CID for invalid exclusion decision or exclusion orders Notification of decision
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Exclusion decisions and exclusion orders

Drafting and submitting an exclusion submission

<p>About this guidance</p> <p>Exclusion decisions – non EEA nationals</p> <p>Exclusion orders – EEA nationals</p> <p>Processes used for exclusion decisions and exclusion orders</p>	<p>This page tells criminal casework caseworkers how to draft and submit an exclusion submission.</p> <p>You must work with your senior caseworker (SCW) to make sure all the details of the case and recommendation are correctly summarised. Once the draft submission is agreed, the SCW forwards it to the criminal casework briefing and correspondence team (BCT) inbox using related link: Email: CCD Secretariat.</p> <p>BCT prepare a brief recommendation for approval by the director (grade 5) then forwards it to the Home Secretary. Once approved they advise the SCW directly.</p> <div data-bbox="481 703 1693 956"><p>Restricted – do not disclose – start of section</p><p>The information in this page has been removed as it is restricted for internal Home Office use only.</p><p>Restricted – do not disclose – end of section</p></div> <p>If the Home Secretary agrees to exclude, the date confirmation is received from private office is the date the order takes effect. There is nothing else to sign and no notice or appeals papers which need to be served, as there is no right of appeal against this decision.</p> <p>For more information on submissions see related link: Working with ministers.</p> <p>Actions to take</p> <div data-bbox="481 1254 1693 1430"><p>Restricted – do not disclose – start of section</p><p>The information in this page has been removed as it is restricted for internal Home Office use only.</p><p>Restricted – do not disclose – end of section</p></div>	<p>Related links</p> <p>Levels of authority</p> <p>Requests to revoke an exclusion decision or exclusion order</p> <p>Invalid exclusion decisions and exclusion orders</p> <p>Actions to take when revoking an exclusion decision or exclusion order</p> <p>Updating CID when revocation of exclusion decision or order is agreed</p> <p>Updating CID for invalid exclusion decision or exclusion orders</p> <p>Notification of decision</p> <p>Links to staff intranet removed</p>
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	<p>Although there is no physical 'exclusion order', and nothing to serve on the subject, the Home Secretary has a duty to act fairly and the individual must be notified of the decision to exclude them if possible.</p> <p>If the whereabouts of the person is known abroad you must write to tell them they have been excluded from the UK.</p> <p>No notification is needed in the following circumstances:</p> <ul style="list-style-type: none"> • If the whereabouts of the person is not known. • If letters sent to the last known address are returned as 'Gone away' or 'Not known at this address'. In these cases you must serve the letter to file and minute the file in line with this. If the person's whereabouts later becomes known or the person arrives at port, the letter can be served at that point. • If the notice breaches a person's confidentiality (for example, the person is currently in prison and mail is liable to be screened). • If the notice compromises ongoing intelligence or operational activities, severely damages UK diplomatic relations or significantly increases the risk to British personnel or interests overseas. <p>You must copy all letters sent to the person and place them on file. You must also update CID notes.</p> <p>Updating CID when making an exclusion decision or order Go to the 'Case Maintenance' screen and update the 'Case Outcome' screen to show the individual is excluded by the Home Secretary.</p>	
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Exclusion decisions and exclusion orders

Levels of authority

About this guidance Exclusion decisions – non EEA nationals Exclusion orders – EEA nationals Processes used for exclusion decisions and exclusion orders	<p>This page tells you the levels of authority needed to agree and authorise a proposal to revoke an exclusion decision or exclusion order.</p> <ul style="list-style-type: none">• A proposal to revoke an exclusion decision can be made by an executive officer (EO) caseworker. The proposal must be approved at no lower than senior executive officer (SEO) level. In all cases the proposal needs to be in a submission format sent by the criminal casework director and agreed personally by the Home Secretary.• A proposal not to revoke an exclusion decision can be made by an EO caseworker. The proposal must be authorised and agreed at no lower than higher executive officer (HEO) level. <div><div>Restricted – do not disclose – start of section</div><div>The information in this page has been removed as it is restricted for internal Home Office use only.</div><div>Restricted – do not disclose – end of section</div></div>	Related links Drafting and submitting an exclusion submission Requests to revoke an exclusion decision or exclusion order Invalid exclusion decisions and exclusion orders Actions to take when revoking an exclusion decision or exclusion order Updating CID when revocation of exclusion decision or order is agreed Updating CID for invalid exclusion decision or exclusion orders Notification of decision
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Exclusion decisions and exclusion orders

Requests to revoke an exclusion decision or exclusion order

About this guidance Exclusion decisions – non EEA nationals Exclusion orders – EEA nationals Processes used for exclusion decisions and exclusion orders	<p>This page tells you about requests to revoke an exclusion decision or exclusion order.</p> <p>Consideration of applications to revoke an exclusion order</p> <p>There is no formal process for applying for the revocation of an exclusion decision or order. However, the use of exclusion in criminal cases is designed to replicate the effect of deportation by stopping foreign national offenders (FNO's) from returning to the UK for a similar period, as if they had been deported.</p> <p>In line with policy on the revocation of deportation orders, you must refuse applications unless:</p> <ul style="list-style-type: none">• 10 years have passed for sentences of less than 30 months• the sentence imposed was 30 months or more• refusal would result in a breach of our obligations under the European Convention of Human Rights or the Convention and Protocol Relating to the Status of Refugees, or• the applicant's circumstances have changed significantly since the exclusion decision was made. <p>You are responsible for considering and recommending whether an application to revoke an exclusion decision should be granted. However, as with the initial decision to exclude, the Home Secretary has sole authority to decide whether exclusion should be revoked.</p> <p>Requests to revoke from abroad</p> <p>Requests to revoke an exclusion decision or, in the case of European Economic Area (EEA) nationals, an exclusion order, from outside the UK can be made at any time to the Home Office or entry clearance post abroad by the person excluded or their representative.</p> <p>The revocation must be successful to make it possible to lawfully return to the UK. Even where an exclusion decision or order has been revoked, return to the UK is not an automatic right. Visa nationals still require a visa to return to the UK. Non-visa nationals still need to</p>	<p>Related links</p> <p>Drafting and submitting an exclusion submission</p> <p>Levels of authority</p> <p>Invalid exclusion decisions and exclusion orders</p> <p>Actions to take when revoking an exclusion decision or exclusion order</p> <p>Updating CID when revocation of exclusion decision or order is agreed</p> <p>Updating CID for invalid exclusion decision or exclusion orders</p> <p>Notification of decision</p> <p>Links to staff intranet removed</p>
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	<p>satisfy Border Force officers they meet the requirements of the rules, or in the case of EEA nationals and their dependants they are exercising Treaty Rights.</p> <p>There are no formal application forms to be completed when requesting revocation of an exclusion decision. Requests can be submitted directly to criminal casework.</p>	
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Exclusion decisions and exclusion orders

Invalid exclusion decisions and exclusion orders

About this guidance Exclusion decisions – non EEA nationals Exclusion orders – EEA nationals Processes used for exclusion decisions and exclusion orders	<p>This page tells you about invalid exclusion decisions or exclusion orders.</p> <p>Reasons why exclusion might be invalid are:</p> <ul style="list-style-type: none">• the person was in the UK when the exclusion decision or order was made, or• the basis for the exclusion no longer applies. <p>Agreement and clarification that exclusion is invalid must be sought from a senior caseworker.</p> <p>The exclusion decision can only be revoked by the Home Secretary and a submission setting out the factors must be submitted through the usual channels.</p> <p>If a deportation order is in place, there must not be an exclusion order or decision made, as this would be unnecessary.</p>	Related links Drafting and submitting an exclusion submission Levels of authority Requests to revoke an exclusion decision or exclusion order Actions to take when revoking an exclusion decision or exclusion order Updating CID when revocation of exclusion decision or order is agreed Updating CID for invalid exclusion decision or exclusion orders Notification of decision
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Exclusion decisions and exclusion orders

Actions to take when revoking an exclusion decision or exclusion order

<p>About this guidance</p> <p>Exclusion decisions – non EEA nationals</p> <p>Exclusion orders – EEA nationals</p> <p>Processes used for exclusion decisions and exclusion orders</p>	<p>This page tells you what action to take when revoking either an exclusion decision or an exclusion order.</p> <p>When revoking an exclusion decision – non-European Economic Area (EEA) nationals</p> <p>You must make a submission in each case where the revocation of the Home Secretary's decision to exclude is being sought.</p> <p>If the Home Secretary agrees the exclusion decision can be revoked. As there is no order, no specific action is needed. You must record both the reasons for and the outcome of the decision on both CID and the Home Office file.</p> <p>When revoking an exclusion order – EEA nationals</p> <p>In all cases the final decision is taken by the Home Secretary. If agreed you must record the decision to revoke on file and on the CID outcome screen.</p> <p>The CID notes must record which senior executive officer (SEO) approved the decision and when the Home Secretary approved it.</p> <div data-bbox="481 999 1693 1216" style="border: 2px solid red; padding: 10px; margin: 10px 0;"><p style="text-align: center;">Restricted – do not disclose – start of section</p><p>The information in this page has been removed as it is restricted for internal Home Office use only.</p><p style="text-align: center;">Restricted – do not disclose – end of section</p></div>	<p>Related links</p> <p>Drafting and submitting an exclusion submission</p> <p>Levels of authority</p> <p>Requests to revoke an exclusion decision or exclusion order</p> <p>Invalid exclusion decisions and exclusion orders</p> <p>Updating CID when revocation of exclusion decision or order is agreed</p> <p>Updating CID for invalid exclusion decision or exclusion orders</p> <p>Notification of decision</p>
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Exclusion decisions and exclusion orders

Updating CID when revocation of exclusion decision or order is agreed

<p>About this guidance</p> <p>Exclusion decisions – non EEA nationals</p> <p>Exclusion orders – EEA nationals</p> <p>Processes used for exclusion decisions and exclusion orders</p>	<p>This page tells you how to update CID when the revocation of an exclusion decision or order is agreed.</p> <p>Go back to the front screen and select the case type:</p> <ul style="list-style-type: none">• ‘Exclusion – Application for Revocation – Post Enforcement’, or• ‘Exclusion Order– Application for Revocation – Post Enforcement’. <p>The ‘Case Maintenance’ screen will appear.</p> <p>The ‘Associated Cases’ area of the ‘Search’ screen will list all cases for a person.</p> <p>You must:</p> <ul style="list-style-type: none">• Enter the Home Office (HO) file number, if known, in the ‘Reference Number’ field and click the ‘Search’ button. If an HO reference cannot be found for the person or the person’s details are not displayed after entering a reference number, continue to the next step.• If an HO reference cannot be found for the person, you must search using their name in the ‘Full Name’ field. You must make sure a wildcard is used. Click the ‘Search’ button and all names which begin with the letters entered will be displayed.• Add the person’s date of birth and nationality to the search criteria if too many results are returned.• Select ‘Subject’s name’ from the search results and click on it. Check if ‘Revocation of Deportation Order Request - Out of Country’ is listed in the ‘Case Type’ field, there is a current date and if there is an outcome for example, ‘Revocation Agreed - Granted’, this indicates the case has been updated.• If ‘Revocation of Deportation Order Request - Out of Country’ is not listed you must create a case. Click the green plus sign beside the person’s name to create the case.	<p>Related links</p> <p>Drafting and submitting an exclusion submission</p> <p>Levels of authority</p> <p>Requests to revoke an exclusion decision or exclusion order</p> <p>Invalid exclusion decisions and exclusion orders</p> <p>Actions to take when revoking an exclusion decision or exclusion order</p> <p>Updating CID for invalid exclusion decision or exclusion orders</p> <p>Notification of decision</p>
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Exclusion decisions and exclusion orders

Updating CID for invalid exclusion decision or exclusion orders

About this guidance Exclusion decisions – non EEA nationals Exclusion orders – EEA nationals Processes used for exclusion decisions and exclusion orders	<p>This page tells you how to update CID when you identify an invalid exclusion decision or order.</p> <p>After updating the 'Case Maintenance' screen you must add the decision to the 'Deportation/Exclusion' section of the offences screen as follows:</p> <ul style="list-style-type: none">• Check the case type is correct.• Make sure all the previous actions about obtaining the deportation order, exclusion decision or exclusion order, are recorded. If any are missing you must record them with the date they took place. The system automatically fills the date field with the current date so you must change this accordingly.• Select 'Date Exclusion Revoked by Home Secretary' from the drop down menu and record the revocation.• Against 'Exclusion Revoked' enter the date the revocation took place. CID fills in the date automatically with the current date so you must change this accordingly.• The system will automatically fill in the 'Unit' field.• Select the reason for the revocation from the drop down menu.• Click the 'Save/Exit' button.	Related links Drafting and submitting an exclusion submission Levels of authority Requests to revoke an exclusion decision or exclusion order Invalid exclusion decisions and exclusion orders Actions to take when revoking an exclusion decision or exclusion order Updating CID when revocation of exclusion decision or order is agreed Notification of decision
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Exclusion decisions and exclusion orders

Notification of decision

<p>About this guidance</p> <p>Exclusion decisions – non EEA nationals</p> <p>Exclusion orders – EEA nationals</p> <p>Processes used for exclusion decisions and exclusion orders</p>	<p>This page tells you how to notify a person or record the details on file when a revocation of the exclusion has taken place.</p> <p>Once a decision is made on revocation you must tell the applicant or their representative. If the application was made at an overseas post the decision must be sent through the entry clearance officer (ECO).</p> <p>Complete ICD.4068 which explains the decision and warns that revocation does not give automatic entitlement to enter the UK.</p> <p>You must place copies of all letters sent on the Home Office file and update CID.</p> <p>If a deportation order and an exclusion decision are signed against the same person, you must review the decisions to establish which decision is more appropriate and valid.</p> <p>A deportation order is valid if the person was in the UK on the date the order was signed. Exclusion decisions are valid if the person was outside the UK on the date the proposal was agreed by the Home Secretary.</p> <p>If the order is valid you must make a submission to the Home Secretary through your director, explaining the reasons and seeking the revocation of the exclusion decision. Where the deportation order is invalid it will be treated as void and must be revoked by a senior executive officer (SEO).</p> <p>In cases where both decisions are valid, the deportation order must take precedence and a submission made to revoke the exclusion decision as set out above.</p>	<p>Related links</p> <p>Drafting and submitting an exclusion submission</p> <p>Levels of authority</p> <p>Requests to revoke an exclusion decision or exclusion order</p> <p>Invalid exclusion decisions and exclusion orders</p> <p>Actions to take when revoking an exclusion decision or exclusion order</p> <p>Updating CID when revocation of exclusion decision or order is agreed</p> <p>Updating CID for invalid exclusion decision or exclusion orders</p>
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Exclusion decisions and exclusion orders

Contact

About this guidance Exclusion decisions – non EEA nationals Exclusion orders – EEA nationals Processes used for exclusion decisions and exclusion orders	<p>This page explains who to contact for more help with a specific case of exclusion decisions or exclusion orders.</p> <p>If you have read this guidance and still need more help with this category, you must first ask your senior caseworker or line manager.</p> <p>If the question cannot be answered at that level, you may email criminal casework operational process and policy team (CCOPPT) using related link: Email CCD process team.</p> <p>Changes to this guidance can only be made by the modernised guidance team (MGT). If you think the policy content needs amending, you must contact CCOPPT, who will ask the MGT to update the guidance, if appropriate.</p> <p>The MGT will accept direct feedback on broken links, missing information or the format, style and navigability of this guidance. You can send these using the link: Email: Modernised guidance team.</p>	Related links Changes to this guidance Information owner Links to staff intranet removed
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Exclusion decisions and exclusion orders

Information owner

About this guidance Exclusion decisions – non EEA nationals Exclusion orders – EEA nationals Processes used for exclusion decisions and exclusion orders	<p>This page tells you about this version of the exclusion decisions or exclusion orders guidance and who owns it.</p> <table><tr><td>Version</td><td>4.0</td></tr><tr><td>Valid from date</td><td>16 July 2013</td></tr><tr><td>Policy owner</td><td>Criminal casework operational process and policy team (CCOPPT)</td></tr><tr><td>Cleared by director</td><td>Megan Smart</td></tr><tr><td>Director’s role</td><td>Criminal casework director</td></tr><tr><td>Clearance date</td><td>27 June 2012</td></tr><tr><td>This version approved for publication by</td><td>Richard Short</td></tr><tr><td>Approver’s role</td><td>Assistant director, modernised guidance team</td></tr><tr><td>Approval date</td><td>8 July 2013</td></tr></table> <p>Changes to this guidance can only be made by the modernised guidance team (MGT). If you think the policy content needs amending you must contact CCOPPT using related link: Email CCD process team, who will ask the MGT to update the guidance, if appropriate.</p> <p>The MGT will accept direct feedback on broken links, missing information or the format, style and navigability of this guidance. You can send these using the link: Email: Modernised guidance team.</p>	Version	4.0	Valid from date	16 July 2013	Policy owner	Criminal casework operational process and policy team (CCOPPT)	Cleared by director	Megan Smart	Director’s role	Criminal casework director	Clearance date	27 June 2012	This version approved for publication by	Richard Short	Approver’s role	Assistant director, modernised guidance team	Approval date	8 July 2013	<p>Related links</p> <p>Changes to this guidance</p> <p>Contact</p> <p>Links to staff intranet removed</p>
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