

Criminal casework

European Economic Area (EEA) foreign national offender (FNO) cases

European Economic Area (EEA) foreign national offender cases

About this guidance

About this guidance Receipt of EEA FNO cases in CC Agreement about deportation of Irish FNO cases Transferring EEA FNO cases to the EEA casework teams General consideration of EEA FNO cases by CC Operation of ERS, TERS and FRS within the EEA deportation framework	<p>This guidance tells criminal casework (CC) staff the process to follow when considering whether deportation of foreign national offenders (FNOs) and their family members from the European Economic Area (EEA) is appropriate.</p> <p>Deportation of EEA nationals and their family members is regulated by the Immigration (European Economic Area) Regulations 2006, see related link. Under regulation 21 of these regulations, they can only be deported from the UK for the following reasons:</p> <ul style="list-style-type: none">• public policy• public security, or• public health. <p>You must be satisfied the person's conduct represents a genuine, present and sufficiently serious threat affecting one of these fundamental interests of society (for further information on the definitions of serious public policy or security, and imperative grounds of public security, see section 3.2 of related link: 08 Enforcement action taken against EEA nationals and family members).</p> <p>The automatic deportation provisions of the UK Borders Act 2007 cannot be applied to EEA nationals as they only cover FNOs from non-EEA countries. You must consider them under section 3(5)(a) of the Immigration Act 1971. You must also apply the deportation procedure and provisions set out in section 5 and schedule 3 of the 1971 Act (see related link).</p> <p>The Home Secretary decided the public interest is not generally served by enforcing the deportation of Irish nationals (citizens of the Republic of Ireland), except in the most exceptional circumstances. So, Irish FNOs are not generally referred to CC for consideration of deportation (for more details see link on left: Agreement about deportation of Irish FNO cases).</p> <p>This guidance outlines the processes followed by the different caseworking areas in CC for considering deportation in EEA cases.</p>	<p>Related links</p> <p>Changes to this guidance Contacts Information owner</p> <p>Links to staff intranet removed</p>
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	<ul style="list-style-type: none">• Croydon – manage cases concerning FNOs who are EEA nationals or family members of another EEA national (a list of eligible countries can be found at related link: European Economic Area member states and Switzerland).• Liverpool – manage non-detained EEA FNO cases.• Leeds - the dedicated minors, mothers and babies team (MMBT) manage under 18 cases and all child FNO cases in CC regardless of nationality. <p>Changes to this guidance – tells you what has changed since previous versions of this guidance.</p> <p>Contacts – this page explains who to contact for more help with a specific question on public funds</p> <p>Information owners – tells you who the information owners are for public funds and tells how the guidance can be updated.</p> <p>Safeguard and promote child welfare – explains the duty to safeguard and promote the welfare of children and tells you where to find out more.</p>	
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Changes to this guidance

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This page lists the changes to the European Economic Area (EEA) foreign national offender cases guidance, with the most recent at the top.

Date of the change	Details of the change
23 July 2013	Six month review by the modernised guidance team: <ul style="list-style-type: none">• Minor housekeeping changes.
15 January 2013	Revised and modernised by criminal casework directorate process team and the modernised guidance team.

Related links

See also

[Contacts](#)
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European Economic Area (EEA) foreign national offender cases

Receipt of EEA FNO cases in CC

About this guidance Receipt of EEA FNO cases in CC Agreement about deportation of Irish FNO cases Transferring EEA FNO cases to the EEA casework teams General consideration of EEA FNO cases by CC Operation of ERS, TERS and FRS within the EEA deportation framework	<p>This page tells criminal casework (CC) caseworkers the process for receiving foreign national offender (FNO) cases believed to be European Economic Area (EEA) nationals or their family members.</p> <p>All cases are referred by the FNO's holding establishment to CC's workflow team in Croydon, using a CCD referral form (see related link). All FNOs handed a custodial sentence of one year or over are referred for consideration of deportation.</p> <p>In cases of EEA FNOs, one of the workflow teams must check the CCD referral form to make sure the FNO meets the internal EEA deportation threshold criteria. The following thresholds apply:</p> <ul style="list-style-type: none">• custodial sentences of two years (24 months) or over for any offences, or• custodial sentences of one year (12 months) or over if the offence is related to drugs, sex, violence or other serious criminal activity (for detail of these specific offences see related link: EEA National 12m offences list). <p>Whilst in the majority of cases the two-year threshold will apply for acceptance into CC, there may be rare occasions when CC is instructed to accept a case that falls below that threshold, for example on direction from a Minister or the chief executive.</p> <p>If the prison decides to refer an EEA national FNO case for exceptional reasons, they must provide their reasons for why they think it is exceptional. This means the FNO is identified as one or more of the following:</p> <ul style="list-style-type: none">• a Multi-Agency Public Protection Agency (MAPPA) case• serving an extended sentence for public protection• serving an extended sentence under the Criminal Justice Act 1991• serving an indeterminate sentence of imprisonment for public protection• has a previous conviction for a sexual or violent offence that attracted a sentence of	Links to staff intranet removed
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	<p>two years or more.</p> <p>If none of these factors apply, a workflow team officer must check the reason for referral with the FNO's offender manager. If there are no specific reasons given, the case is not pursued. If you are unclear whether to accept or reject a referral of this type, you must contact a senior caseworker in EEA casework.</p> <p>If the FNO meets the deportation threshold criteria, you must:</p> <ul style="list-style-type: none"> • collate the Home Office file (for more details see related link: Workflow) • send a notice of liability to deportation letter (ICD.0350EEA available on the CID document generator) to the prison for the FNO to complete (this helps establish the level of EEA Treaty Rights the FNO is eligible for) • send a 'NOMS1 EEA' risk assessment form (ICD.3628 on the document generator) to the FNO's offender manager who must provide an assessment of the FNO's likelihood of re-offending (their details are on the release licence and must be entered on to CID, but if it is not clear or the case is urgent you must contact the relevant Probation Trust's single point of contact – see related link: Probation trusts single point of contact (SPOC) list), and • update CID accordingly. <p>If the FNO does not meet the deportation threshold criteria, and the prison provides insufficient reasons to justify the referral on exceptional grounds, the case will not be pursued in CC, and you must:</p> <ul style="list-style-type: none"> • send a warning letter (ICD.0260EEA available on the document generator) to the prison for conveyance to the FNO (along with a covering note advising them deportation will not be pursued – this may be relevant if they are eligible for Home Detention Curfew), and • update CID accordingly. <p>You must remember the Secretary of State's agreement of 2007 not to pursue deportation of Irish FNOs. For more details see related link: Agreement about deportation of Irish FNO cases.</p>	
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Agreement about deportation of Irish FNO cases

About this guidance Receipt of EEA FNO cases in CC Agreement about deportation of Irish FNO cases Transferring EEA FNO cases to the EEA casework teams General consideration of EEA FNO cases by CC Operation of ERS, TERS and FRS within the EEA deportation framework	<p>This page tells criminal casework (CC) caseworkers about the special agreement made by the Secretary of State in 2007 regarding deportation in the case of EEA nationals from the Republic of Ireland.</p> <p>On 19 February 2007, the Home Secretary decided the public interest was not generally be served by the deportation of Irish nationals (citizens of the Irish Republic), except in special circumstances. This agreement covers Irish nationals and anyone of dual Irish and another nationality. It does not cover non-EEA nationals who are the dependants of Irish nationals.</p> <p>Irish FNOs subject to a court recommendation for deportation are referred in the usual way.</p> <p>Irish FNO cases considered exceptional enough to merit deportation will be rare. Irish nationality does not provide automatic immunity from deportation regardless of individual circumstances.</p> <p>As a guide, deportation is still considered if an offence involves national security matters, or crimes that pose a serious risk to the safety of the public or a section of the public. For example, a person convicted and serving a custodial sentence of 10 years or more for:</p> <ul style="list-style-type: none">• a terrorism offence• murder• a serious sexual or violent offence. <p>If a decision is taken to deport an Irish national under the Immigration (European Economic Area) Regulations 2006, the case is dealt with in line with other EEA deportations and treated as if the decision was taken under section 3(5)(a) of the Immigration Act 1971 (as amended) on grounds that their presence is not conducive to the public good.</p> <p>Deportation of Irish nationals is only in the public interest in exceptional circumstances. If a court recommends deportation the Secretary of State can use discretion and consider the referral. Any decision to proceed must be authorised at director level or above.</p>	
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	<p>Extant deportation orders (DOs) for Irish nationals deported before 19 February 2007 remain in force, and if they try to re-enter the UK while subject to a DO they can be removed as an illegal entrant in the same way as any other deportee whose DO remains live.</p> <p>Any application from an Irish national for their DO to be revoked must be considered by CC using the policy in force after 19 February 2007.</p>	
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Transferring EEA FNO cases to the EEA casework teams

About this guidance Receipt of EEA FNO cases in CC Agreement about deportation of Irish FNO cases Transferring EEA FNO cases to the EEA casework teams General consideration of EEA FNO cases by CC Operation of ERS, TERS and FRS within the EEA deportation framework	<p>This page tells you the process used for transferring European Economic Area (EEA) foreign national offenders (FNOs) to the dedicated casework team in criminal casework (CC).</p> <p>A FNO case is only sent to the EEA command if it is established that the FNO is an EEA national or, they are a non-EEA family member of an EEA national. There must be documentary evidence to confirm this, in the form of:</p> <ul style="list-style-type: none">• a passport, or• an identity card. <p>Confirmation that the document is held by the prison where the FNO is being held and/or was seen previously by the Home Office, is usually enough.</p> <p>Non-EEA nationals who qualify under the EEA Regulations 2006 as family members of EEA nationals are usually married or unmarried partners. You must establish that the FNO is a qualifying family member of an EEA national exercising their Treaty Rights in the UK, and make sure they qualify for consideration of deportation under the EEA criteria, before forwarding the case to the EEA casework teams.</p> <p>If the FNO says they are an unmarried partner of an EEA national you must refer the case to the European senior casework team in Liverpool, who will consider if the non-EEA FNO is in a durable relationship that brings them under the scope of the EEA Regulations.</p> <p>If the FNO qualifies for a residence card as a family member, they will be issued with one, and the case will be referred to the EEA casework team for deportation consideration.</p> <p>If they are refused a residence card, they do not qualify for consideration under the EEA criteria and the case will be referred to workflow to allocate to another casework team in CC who continue the consideration as a non-EEA case.</p>	Links to staff intranet removed
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	<p>If the FNO says they are a married partner of an EEA national the case is referred directly to the EEA casework team. You must consider if the non-EEA FNO is in a genuine marriage that brings them under the scope of the EEA Regulations. Usually, this means seeing the passport or identity card of the EEA national, and a valid marriage certificate.</p> <p>A FNO's religious marriage in the UK is not recognised, unless it is held in a Church of England place of worship. If the religious marriage took place abroad, it may be valid, but you must be refer these cases to the European senior casework team in Liverpool for further investigation.</p> <p>If the marriage is not recognised, the FNO can still be considered effectively as an unmarried partner, which again would be considered by the European senior caseworker.</p> <p>If it is established that someone qualifies under the EEA Regulations and does not meet the criteria for deportation in EEA cases, the original caseworker may decide to concede deportation action. A senior executive officer (SEO) senior caseworker must authorise this.</p> <p>Child FNOs from EEA nationalities must be referred directly to the minors, mothers and babies (MMB) team in Leeds to manage.</p>	
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General consideration of EEA FNO cases by CC

About this guidance Receipt of EEA FNO cases in CC Agreement about deportation of Irish FNO cases Transferring EEA FNO cases to the EEA casework teams General consideration of EEA FNO cases by CC Operation of ERS, TERS and FRS within the EEA deportation framework	<p>This page tells criminal casework (CC) caseworkers the processes for considering European Economic Area (EEA) foreign national offender (FNO) cases for deportation.</p> <p>Once the relevant forms are returned by the prison and the papers have been collated on the Home Office file by CC workflow (see link on left: Receipt of EEA FNO cases in CC), the case must be sent to one of the EEA casework teams in Croydon. CC workflow decide which casework team to allocate cases to.</p> <p>Guiding principle</p> <p>You must remember that for the balance to tip realistically in favour of deporting an EEA national within the EEA Regulations 2006, be it on public policy, health or security grounds, the severity and gravity of the factors must be significantly higher than expected for non-EEA nationals under the Immigration Act 1971 or UK Borders Act 2007.</p> <p>EEA nationals and their family members enjoy a broad range of freedoms under the EEA Regulations, and the jurisdiction of the UK government to enforce restrictions on them (including deportation), even if serious criminal offences are committed, is limited by its obligations under the European Union Directive.</p> <p>Lengths of sentence and UK residence</p> <p>If you decide to pursue deportation, you must carefully consider the length of sentence against the FNO's claimed length of residence within the context of the EEA Regulations 2006 (except for cases referred in exceptional circumstances). This helps determine if a case will be pursued.</p> <p>You must assess the available evidence to support their claim of how long they have lived in the UK, and if they were exercising EEA Treaty Rights for that period. You may need to get additional evidence by obtaining National Insurance records and using other relevant sources.</p>	Links to staff intranet removed
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	<p>Human rights</p> <p>You must consider any rights specified in the European Convention on Human Rights (ECHR) for the FNO and their family members as well as the following factors:</p> <ul style="list-style-type: none"> • severity of offence • length of sentence • length of UK residence, and • strength of ties here. <p>Considering FNO cases in respect of articles 3 and 8 (and relevant case law) in particular, requires detailed analysis of the evidence available about their circumstances, if it is decided to continue deportation.</p> <p>Although considering article 8 for most criminal cases was brought within the scope of the Immigration Rules (at paragraphs 396 to 400) from 9 July 2012, the UK Immigration Rules do not apply to EEA nationals.</p> <p>Provisions for EEA nationals are contained in the 2006 Regulations. Any consideration of this, and any other relevant articles, must be balanced very carefully and in line with current case law.</p> <p>For guiding principles and information in FNO cases involving children and family see related link: Deportation of family members of foreign national offenders.</p>	
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European Economic Area (EEA) foreign national offender cases

Operation of ERS, TERS and FRS within the EEA deportation framework

About this guidance Receipt of EEA FNO cases in CC Agreement about deportation of Irish FNO cases Transferring EEA FNO cases to the EEA casework teams General consideration of EEA FNO cases by CC Operation of ERS, TERS and FRS within the EEA deportation framework	<p>This page tells criminal casework (CC) caseworkers about different types of removal schemes used when considering deportation in European Economic Area (EEA) foreign national offender (FNO) cases.</p> <p>Early removal scheme (ERS)</p> <p>Determinately-sentenced FNOs can be released from prison anytime between the halfway point of their sentence and sentence expiry date, for the specific purpose of being removed from the UK to their home country. EEA nationals can be considered under this scheme if they meet the criteria for deportation.</p> <p>If they are released for removal under ERS, they will be made the subject of a deportation order (DO), and their departure is enforced under that authority.</p> <p>FNOs that fall short of the EEA criteria, but whose removal the Home Office may still wish to pursue, are referred to the relevant local immigration team (LIT) to consider.</p> <p>Tariff-expired removal scheme (TERS)</p> <p>Indeterminately-sentenced FNOs can be released from prison after serving their minimum tariff, for the specific purpose of removal from the UK to their home country, without the need for authorisation from the Parole Board. EEA nationals can be considered under this scheme if they meet the criteria for deportation.</p> <p>If they are released for removal under TERS, they will already be the subject of a DO, and their departure will be enforced under that authority.</p> <p>For more details of ERS and TERS, see related links:</p> <ul style="list-style-type: none">• The early removal scheme (ERS)• The tariff-expired removal scheme (TERS) <p>Facilitated returns scheme (FRS)</p>	Links to staff intranet removed
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	FNOs may depart the UK on their release with a financial incentive to assist with their re-integration into society in their home country. EEA nationals are not eligible for this scheme, and any applications they make will be rejected.	
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Contacts

About this guidance Receipt of EEA FNO cases in CC Agreement about deportation of Irish FNO cases Transferring EEA FNO cases to the EEA casework teams General consideration of EEA FNO cases by CC Operation of ERS, TERS and FRS within the EEA deportation framework	<p>This page explains who to contact for more help with a specific European Economic Area (EEA) foreign national offender (FNO) case.</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 they cannot answer your question, they or you may email criminal casework operational process and policy (CCOPP) team , see related link.</p> <p>Changes to this guidance can only be made by the modernised guidance team. If you think the policy content needs amending you must contact CCOPP, who will ask the modernised guidance team to update the guidance (see related link: Email CCD process team).</p> <p>The modernised guidance team will accept direct feedback on broken links, missing information or the format, style and navigability of this guidance. You can email these to the modernised guidance team (see related links).</p>	<p>Related links</p> <p>Changes to this guidance</p> <p>Information owner</p> <p>Links to staff intranet removed</p>
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Information owner

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This page tells you about this version of the European Economic Area foreign national offender cases guidance and who owns it.

Version	2.0
Valid from date	23 July 2013
Guidance owner	Criminal casework operational process and policy team (CCOPP)
Cleared by director	Sonia Dower
Director's role	Director operational policy and rules unit
Clearance date	14 January 2013
This version approved for publication by	Richard Short
Approver's role	Assistant director, modernised guidance team
Approval date	19 July 2013

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