

## **EEA Administrative Removal**

This factsheet looks at the updated policy and guidance dated 4th May 2016 describing the operational process for the administrative removal of a European Economic Area (EEA) national by Immigration Compliance and Enforcement teams. It has been written for voluntary-sector agencies, local authorities and others working with EEA nationals facing homelessness.

### **Who are EEA nationals?**

EEA nationals are nationals of a Member State of the European Union (EU) other than the UK, or a national of Iceland, Liechtenstein, Norway or Switzerland.

### **What is Administrative Removal?**

The process by which a non-UK national is expelled from the UK by the immigration authorities. Persons subject to removal include EEA nationals who must fulfil certain conditions to remain in the UK.

### **What is new?**

The main addition to the original guidance on administrative removal of EEA Citizens introduces rough sleeping as an abuse of the right to freedom of movement (Reg 19(3)(c)). EEA nationals sleeping rough become liable to be removed, which may include detention and subject to re-entry restrictions for 12 months, regardless of how long they have been residing in the UK or if they are otherwise exercising Treaty rights.

Rough sleeping is a sufficient condition to grant power of removal to the Home Office.

### **Right to Reside**

#### **Initial right to reside - 3 months**

EEA nationals have an initial right of residence for 3 months beginning on the date on which they were admitted to the UK. During this 3-month period, they are not eligible to claim welfare benefits. There are no other conditions or restrictions placed upon them.

#### **Extended right to reside - 3 months - 5years**

Beyond the initial 3 month period, EEA nationals are entitled to remain in the UK as a 'qualified person' through exercising a Treaty right. An individual may lose their right to reside and be subject to administrative removal if they cease to exercise a Treaty right.

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

- Job seeker (up to 91 days)
- Worker
- Self-employed, Self-sufficient, Student

As a job seeker, one must demonstrate:

- activity of looking for a job e.g. visits to Job Centre, job applications
- likelihood of finding a job, e.g. language skills, qualifications

## Permanent right to reside - 5+ years

After a period of 5 years of continuous lawful residence in the UK, EEA nationals who are in the UK acquire a right of permanent residence that does not require them to be exercising a Treaty right. This right can only be lost through an absence from the UK of more than 2 consecutive years.

## Powers of Home Office to forcibly remove EEA nationals

### Regulation 19(3)(a): no right to reside

Regulation 19(3)(a) may be used where there is evidence that the person never had, or has ceased to have, a right to reside under the EEA regulations. In practice, this mostly applies to EEA nationals who have been in the UK for at least 3 months and less than 5 years.

### Regulation 19(3)(c): abuse of rights

Regulation 19(3)(c) may be used where there are reasonable grounds to suspect fraud or an abuse of rights under the EEA regulations.

Removals under regulation 19(3)(c) must meet at least one of the following criteria:

- they have engaged in conduct which appears to be intended to circumvent the requirement to be a qualified person
- they have entered into, attempted to enter into, or assisted another person to (attempt to) enter into a marriage of convenience
- they are sleeping rough
- they have fraudulently obtained, attempted to obtain or assisted the (attempted) fraudulent acquisition of a right to reside under the EEA regulations
- they have attempted to enter the UK within 12 months of being removed under Reg 19(3)(a), and are unable to provide evidence that upon re-entry, the conditions for any right to reside, other than the initial right of residence, are met

**This regulation may apply even if the EEA national has been in the UK for less than 3 months, or is otherwise exercising Treaty rights. In 'serious cases of abuse' it can apply to a person who has a permanent right of residence.**

## EEA nationals rough sleeping

Rough sleeping is considered to be an abuse of free movement rights, therefore EEA nationals encountered sleeping rough may be subject to administrative removal under regulation 19(3)(c).

### Definition

Individuals are identified as rough sleepers where they are sleeping, about to bed down (sitting on/ in or standing next to their bedding) or actually bedded down on the street, or in other open spaces or locations not designed for habitation, such as doorways, stairwells, parks or derelict buildings. 'Bedded down' is taken to mean either lying down or sleeping.

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

### Removals

The Home Office will consider the administrative removal of EEA nationals who are sleeping rough, even if they:

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

In more serious cases of abuse it can apply to a person who has a permanent right of residence.

## **Proportionality**

A decision to administratively remove an EEA national can be made under regulation 19(3)(c) only where it is considered proportionate. All 19(3)(c) removals must take into account all the circumstances of the case; these considerations must be fully recorded by Immigration Officers.

This includes:

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

## **Vulnerability & suspected trafficking**

Vulnerable rough sleepers must be referred to the local authority's outreach services to make sure they receive the support they need. Similarly with individuals who are at risk of suicide or self-harm, appropriate action must be taken by Immigration Officers. If EEA nationals may be potential victims of trafficking, they must be referred by Immigration Officers to the National Referral Mechanism (NRM).

## **Administrative Removal Procedure**

Standard removal procedure apply to the enforcement of 19(3)(c) Regulation. As follows:

### **Initial Encounter**

During the initial encounter, Immigration Officers must assess the individual to try and establish status. If further investigation is required, a "Minded to Remove" (ICD 4621) letter must be issued, inviting individual to attend an interview. There is no serving notice for this interview, as long as it gives enough time to collect evidence required.

If, during this initial encounter, it is established that the individual is not exercising his/her treaty rights, IS 151 A and B (EEA) can be served.

Up until then, all is based on consent - no photographic or finger printing evidence can be taken by authority alone.

### **Removal**

When Immigration Officers have enough info to establish that the individual is sleeping rough (or not exercising a Treaty right), the following letters are served together and must include Appeal papers (ICD. 1041 and ECD. 3138):

- IS 151A "liability to removal" - enables IO to keep passport
- IS 151B "decision to remove" - automatically gives rise to 14-day right of appeal but is essentially a 30-day notice to leave

This gives power of arrest without warrant to Immigration Officers or constables.

- IS151D "Removal Directions" - giving 72 hours notice for removal, running concurrently with the other periods notice.

### **Retention of Documents**

Retention of documents by Immigration Officers is authorised only after the notice of "liability to removal" (IS 151 A) has been served. However, EEA nationals can request to retain their documents, as withholding the documents may prevent individuals from exercising Treaty rights.

## **Detention**

EEA Nationals should not be detained whilst a decision to administratively remove is pending, except where individual engages in criminality or there is a risk of absconding.

In practice, this means individuals can be detained once a notice of “liability to removal” (IS151A) and a notification of “decision to remove” (IS151B) have been issued, which can be given at the time of initial encounter.

## **Re-entry restrictions**

Individuals removed under Regulation 19(3)(c) for rough sleeping will be subject to re-entry restrictions for 12 months following their removal or voluntary departure.

## **Procedure for appeals and judicial review**

Appeal papers should be served by Immigration Officers together with the notification of “decision to remove” (IS151B).

Appeals have to be lodged within 14 days of the date from which the notification has been received. An appeal against removal under regulation 19(3)(c) will suspend removal.

Individuals who provide evidence that they have ceased rough-sleeping will no longer be liable for removal as a rough sleeper under Regulation 19(3)(c).

## **Appeals**

Appeals are free of charge. However there is no legal aid for appeals. This means that appellants have to submit appeals to the First Tier Tribunal through a lawyer they pay privately<sup>1</sup>, or challenge the decision themselves, or with the assistance of an organisation that can assist with such cases such as the AIRE Centre or ULaw Legal Advice Centre, Pro Bono advice centre, University of Kent law school or even seek advice at their local Citizens Advice Bureau or law centres.

## **Judicial reviews**

Where an individual has not been served with appeal papers but has had their passport or document retained by the Home Office following contact with them and this is restricting their right to work or is impacting on their search for work, this decision may be challengeable by judicial review. Also if the person has been detained and is facing removal their case could be challenge by judicial review. There is legal aid for judicial review cases and clients can contact Detention Action, the AIRE centre and any firms of solicitors who undertake judicial review work.

## **Link to Appeal form and guidance:**

[http://hmctsformfinder.justice.gov.uk/HMCTS/GetForm.do?court\\_forms\\_id=2980](http://hmctsformfinder.justice.gov.uk/HMCTS/GetForm.do?court_forms_id=2980)

For more information, please contact Jean Demars: [j.demars@gold.ac.uk](mailto:j.demars@gold.ac.uk)

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<sup>1</sup> For this try the Law Society’s Find a Solicitor page, <http://solicitors.lawsociety.org.uk/>