

Challenging the detention of EEA nationals

Introduction

1. As with the cases of non-EEA nationals, the starting point in considering the lawfulness of detention of EEA nationals is to establish whether the power to detain exists. The scope and effect of EU law makes that question more complex than it usually is in domestic law cases.

Legal framework

The TFEU

2. The Treaty of the Functioning of the European Union ('TFEU') lays down the founding principles of EU law, including that of proportionality (in Protocol 2, Article 1).
3. Article 21(1) (ex Article 18 TEC) provides:

Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect.

The Citizens Directive

4. Directive 2004/38EC ('the Citizens Directive'), implements this right of freedom of movement granted to all EU citizens by the TFEU. It allows EU citizens:
 - a. the right to enter other member states and reside there for 3 months (Article 6);
 - b. after 3 months, the right to continue to reside if they meet certain criteria, (ie. workers, self-employed, self-sufficient persons with comprehensive sickness insurance, students with sickness insurance), (Article 7);
 - c. It also provides for the right of family members of EU citizens who meet the criteria in Articles 7.
5. Importantly, the right of EU citizens to freedom of movement is found in the TFEU, whereas the right of family members of EU citizens originates from the Citizens Directive.

6. Three provisions in the Citizens Directive allow for derogation from EU law and therefore permit the lawful detention of EEA nationals in certain circumstances.

7. Firstly, Article 14(1):

“Union citizens and their family members shall have the right of residence provided for in Article 6 [of 3 months initial residence], as long as they do not become an unreasonable burden on the social assistance system of the host Member State.”

8. Article 14(3), read with recital 16 of the preamble, allows for expulsion of such persons (and, by implication, detention for that purpose).¹

9. Secondly, Article 27:

1. Subject to the provisions of this Chapter, Member States may restrict the freedom of movement and residence of Union citizens and their family members, irrespective of nationality, on grounds of public policy, public security or public health. These grounds shall not be invoked to serve economic ends.

2. Measures taken on grounds of public policy or public security shall comply with the principle of proportionality and shall be based exclusively on the personal conduct of the individual concerned. Previous criminal convictions shall not in themselves constitute grounds for taking such measures.

The personal conduct of the individual concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. Justifications that are isolated from the particulars of the case or that rely on considerations of general prevention shall not be accepted.

10. Thirdly, Article 35:

Member States may adopt the necessary measures to refuse, terminate or withdraw any right conferred by this Directive in the case of abuse of rights or fraud, such as marriages of convenience. Any such measure shall be proportionate and subject to the procedural safeguards provided for in Articles 30 and 31.

The EEA regulations

11. The Immigration (European Economic Area) Regulations 2006, SI 2006/1003 (‘EEA Regulations’) enact the Citizens Directive domestically.

¹ Article 14 is the source of the powers found in Regulations 19(3)(a) and 24(2) of the EEA

12. The EEA Regulations contain provisions dealing with detention (in particular regulation 19, which governs refusal of entry and removal upon admission, and 21, which regulates decisions taken on the basis of policy provisions).
13. These provisions act as triggers for the powers found in paragraph 16 of schedule 2 of the Immigration Act 1971.
14. A person with rights under the EEA Regulations is only liable to detention under the Immigration Act 1971 when they meet the following criteria in the EEA Regulations.

The EEA regulations – criteria for detention on admission

15. Liability for detention arises for an EEA national on arrival if there is reason to believe they may be refused admission on grounds that:
 - a. Their exclusion is justified on grounds of public policy, public security or public health under regulations 19(1) and 21;
 - b. They are subject to a deportation or exclusion order (regulations 19(1A) and 22(1)(b)); or
 - c. Their admission would lead to the abuse of a right to reside in accordance with regulations 19(1AB) and 21B(1).
16. If there is reason to believe the EEA national falls within these grounds, they are treated as an ordinary alien seeking leave to enter and are liable to detention under the Immigration Act 1971 pending a decision on their admission.

The EEA regulations - criteria for detention after admission

17. An EEA national already in the UK will be liable to detention pending removal if:
 - a. They have been refused admission (regulation 23). If they produce a valid national identity card or passport then they may only be refused admission on public policy, public security or public health grounds or if they entered in breach of a deportation or exclusion order (regulations 19(1) and (1A));
 - b. There are reasonable grounds for suspecting they may be removed on public policy, public security or public health grounds under regulation

21. This power to detain exists unless and until the Secretary of State makes a decision on removal. It also requires some prospect of removal. If removal is based on public security or public policy grounds, certain safeguards apply (reflecting Article 27 of the Citizens Directive):

- i. The decision must be proportionate (regulation 21(5)(a));
 - ii. The decision must be based on the conduct of the person (regulation 21(5)(b));
 - iii. the personal conduct of the person concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society regulation 21(5)(c);
 - iv. matters isolated from the particulars of the case or which relate to considerations of general prevention do not justify the decision regulation 21(5)(d);
 - i. a person's previous criminal convictions do not in themselves justify the decision regulation 21(5)(e).
- c. The decision to remove them was made under:
- i. regulation 19(3)(a) on grounds they do not have or have ceased to have a right to reside under the EEA Regulations;
 - ii. regulation 19(3)(b) on grounds that the Secretary of State has decided that the person's removal is justified on grounds of public policy, public security or public health in accordance with regulation 21;
 - iii. regulation 19(3)(c): on grounds of abuse of rights pursuant to regulations 21 or 21B.

In cases under regulation 19(3), the person should be allowed 1 month after notification of the decision to remove to leave voluntarily except in cases of substantiated urgency or where they are detained pursuant to a sentence or Court order (regulation 24(6)). They remain liable to detention but the exercise of the power may be unlawful if it prevents their being able to return and no other exceptions to the exercise of Treaty rights apply.

- d. They entered in breach of a deportation or exclusion order. They are treated as an illegal entrant liable to a detention pending removal (regulation 24(4)).
18. As far as possible, the Regulations should be read in line with EU law obligations (including those expressed in the Citizens Directive).
19. In the event of any conflict between the EEA Regulations and EU law, EU law must prevail.
20. Authority for this may approach is found in *R (Owusu) Secretary of State for the Home Department* [2009] EWHC 593 (Admin) at paragraph 9, Mr Justice Blake confirmed that where the EEA Regulations fail to give effect to the UK's obligations under EU law, Judges should ignore the EEA Regulations and give direct effect to the Citizens Directive.
21. Accordingly, the detention provisions in the EEA Regulations are intended to reflect the derogations contained in the Citizens Directive (Articles 14, 27 and 35).
22. If there exists a power to detain under the EEA Regulations that has no foundation in the Citizens Directive, then it may be argued that the exercise of that power is unlawful by operation of EU law and that the Citizens Directive and/or rights of the EU citizen under the TFEU should prevail.

Home Office policies

23. Chapters 50 and 55 of the Enforcement Instructions and Guidance (EIG) contain policy guidance in this area. Relevant extracts from those documents have been reproduced below as an Appendix to this paper.

Case law from the Court of Justice of the European Union ('CJEU')

24. Some key principles on the effects of EU law can be derived from the jurisprudence of the CJEU (formerly ECJ).
25. There is a consistent line of reasoning to the effect that, for EU citizens, no detention measure would be permitted if it conflicts with the TFEU.
26. The CJEU has held that an EU citizens' non-compliance with legal formalities do not alone meet the criteria for removal on public policy or public security grounds. In *Salah Oulane v Minister voor Vreemdelingenzaken en Integratie*, Case C-215/03 at paragraph 40 – 42, the Court stated in its judgment:

... detention and deportation based solely on the failure of the person concerned to comply with legal formalities concerning the monitoring of aliens impair the very substance of the right of residence directly conferred by Community law and are manifestly disproportionate to the seriousness of the infringement...

Failure to comply with legal formalities pertaining to aliens' access, movement and residence does not by itself constitute a threat to public policy or security...

27. Where immigration detention interferes with rights of entry and/or residence guaranteed by the Citizens Directive, EU law principles (including the principles of proportionality and necessity) are engaged (*Oulane*).

28. In *Royer, Case 48/75*, the ECJ held at paragraph 43:

*As to the question whether a Member State may take measures for the temporary deprivation of liberty of an alien covered by the terms of the Treaty with a view to expelling him from the territory it must first be stated that **no measure of this nature is permissible if a decision ordering expulsion from the territory would be contrary to the Treaty.***

(bold added)

29. In *Olazabal Case C100/01*, France banned a Spanish national involved with ETA from residing in a number of regions bordering the Basque Country. The Court, at paragraphs 43 and 45, stated that restrictions on free movement of EU citizens must comply with the principle of proportionality and detention is only justified where expulsion would be justified.

30. In synthesis of the case law outlined above:

- a. Detention may only be used **where expulsion is justified**. Therefore a mistaken but reasonable belief the EU national can be expelled is insufficient. It appears that the combined effect of *Royer* and *Olazabal* is that detention cannot be justified by reference only to the beliefs of the Secretary of State;
- b. Detention of an EU national on grounds of 'abuse of rights' may not be justified;
- c. Detention must be proportionate;
- d. Detention must not offend general principles of EU law including the Charter of Fundamental Rights of the European Union ('CFR').

Expulsion must be justified:

31. The EEA Regulations provide for powers to detain on the basis of Secretary of State's decisions, beliefs or suspicions alone (see for example, regulations 19(1AB), 19(3)(b), 21, 22(1)(b), 24(4)).
32. The Citizens Directive requires that the Secretary of State properly investigates the EU law rights of the person before taking enforcement action (*Bassey v Secretary of State for the Home Department* [2011] NICA 67, at § 35).
33. However, the Court of Appeal in *R. (on the application of Nouazli) v Secretary of State for the Home Department* [2013] EWCA Civ 1608 at paragraph 16 rejected a related argument. A family member of an EU national who was detained under regulation 24(1) on reasonable grounds for suspecting he might be deported, and who successfully appealed his deportation, was lawfully detained. The Court of Appeal found that a decision to detain pending a decision on whether to remove a person on public policy, public security or public health grounds could be justified under the broad derogation in Article 27 of the Citizens Directive. *Nouazli* is pending appeal to the Supreme Court, but it is likely to be followed in the meantime.
34. *Nouazli* is arguably distinguishable in cases where the detention of an EEA national (or family member) is based on grounds of suspicion or belief, particularly where detention is incompatible with EU law due to clear deficiencies in the evidence.

Abuse of rights

35. The extent to which Article 35 of the Citizens Directive can justify detention is open to challenge.
36. It provides for measures to withdraw “any right conferred by this Directive in the case of abuse of rights or fraud”. As already noted, unlike family members, EU national obtain their right to free movement under the TFEU, not the Citizens Directive.
37. Article 35 implements the ‘autonomous EU concept of ‘abuse’’, defined in the CJEU case of (*O and B*, Case C-456/12 at paragraph 58, also see *McCarthy v*

Secretary of State for the Home Department, Case C-202/13, Opinion of Advocate General Szpunar of 20 May 2014 at paragraphs 107 - 112).

38. That definition confirms that the abuse principle only applies to artificially created rights. But it is hard to see how that may apply to an EU national intending to assist a third country national in the abuse of rights. The EU national derives the right of free movement under the TFEU – it is not artificially created and detention based on the concept of abuse would undermine free movement rights impermissibly.

Proportionality

39. The requirements of proportionality in the context of EU law were set out in the CJEU case of *R (Omega Air Ltd) v Secretary of State for the Environment, Transport and the Regions (C-27/00)* at paragraph 62:

“the principle of proportionality, which is one of the general principles of Community law, requires that measures adopted by Community institutions should not exceed the limits of what is appropriate and necessary in order to attain the objectives pursued by the legislation in question, and where there is a choice between several appropriate measures, recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued.”

40. This is a more demanding principle than proportionality under ECHR law. The grounds of justification and the test of necessity are narrower.
41. It will only be proportionate where the objective necessity of detention is established following an individual assessment (*Arslan*, Case C-534 at paragraph 63).
42. This exceeds the level of protection afforded by the *Hardial Singh* principles.
43. For example, it is possible to detain a person who presents a low risk of absconding if their removal is imminent under *Hardial Singh*. However, detention of an EEA national at low risk of absconding is not likely to be proportionate under EU law.

The Charter of Fundamental Rights (‘CFR’)

44. Article 6 provides for the unqualified right to liberty and security of the person.

45. Article 52(1) provides for general derogations from the rights in the CFR where measures are necessary and proportionate.
46. Rights found in the CFR which overlap with the ECHR must be interpreted in accordance with ECtHR judgments (Article 52(3)).
47. There are arguments both ways as to whether CFR (Articles 6 and 52) and ECHR (Article 5(1)(f)) provide the same level of protection and/or mean the same thing.
48. Article 52 arguably imposes a requirement that all detention is proportionate.
49. Article 5(1)(f) does not – it simply requires that detention should not continue for an unreasonably long period.
50. Where a detainee is an EEA national, their detention has to be proportionate in any event, but this may be relevant to asylum seekers.
51. Article 21 of the CFR provides:
 - “1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.*
 - 2. Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited.”*
52. It is arguably broader than the ECHR Article 14, as it provides a right not to be discriminated on the basis of nationality subject to the limitations of EU law.
53. In *Nouazli*, the Court of Appeal came to a different conclusion, relying on Article 18 of the TFEU and finding that EU law allows member states to treat EU nationals less favourably than third country nationals on the grounds of nationality (Article 18 only being applicable to different treatment between nationals of different member states). It also held that persons being removed under the EEA Regulations were not in sufficiently similar circumstances to other deportees.

Conclusion

54. Where an EEA national has rights under EU law, the first question is whether there exists a power to detain them under the EEA Regulations. If there is no

power under the EEA Regulations the detention of the EEA national is unlawful. It is arguably unlawful for an EEA national to be detained based on the abuse of rights pursuant to regulations 19(1AB), 19(3)(c), 21 and 21B(1).

55. If there *is* a power under the EEA Regulations, the principles of EU law apply and may make the detention of the EEA national unlawful, namely, proportionality (a more stringent concept in EU law than its counterpart under the European Convention), the requirement that expulsion or removal must be justified and any additional rights under the CFR.

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APPENDIX 1: Extracts from Home Office policies

1. Chapter 55 of the Enforcement Instructions and Guidance (EIG) provides:

55.9.5 EEA Nationals

EEA nationals and their family members should not be detained whilst a decision to administratively remove is pending [see chapter 50 (EEA)]. HMI / SEO authority must be given for the removal.

*Following the decision to administratively remove (service of the 151A EEA), individuals may be detained with the authority of a CIO / HEO, where it is decided on balance that detention is necessary (eg if an individual is suspected of actively engaging in criminality or there is a clear risk of absconding) and the individual meets the Home Office criteria for detention. An HMI / SEO should review detention at the 24-hour point. Regulation 19(3)(b) provides an anticipatory power of detention for cases being considered for deportation, meaning that EEA nationals and their family members who meet the criteria may be detained whilst a decision on deport is pending with criminal casework (CC). **Should CC decide not to proceed with deportation, detention may only continue lawfully if we proceed with administrative removal instead AND have served an IS 151A EEA.***

(55.9.5. this section was added in January 2015)

2. Chapter 50 adds:

4. Criteria and suitability for EEA administrative removal

*Before making the decision to remove an EEA national or a family member of an EEA national, all **reasonable steps** must be taken at that time to ascertain whether the individual fits the EEA administrative removal criteria as set out below:*

Under regulation 19(3)(a)

- a. They have been resident in the UK longer than three months, **and***
- b. They have yet to acquire a right of permanent residence, **and***
- c. They do not have a right to reside on another basis, **and***
- d. They are failing to exercise a Treaty right **or** they are the family member of an EEA national who is failing to exercise a Treaty right*
- e. It is “proportionate” to proceed with removal given all the circumstances of the case.*

Under regulation 19(3)(c)

Where there are reasonable grounds to suspect the abuse of free movement rights or fraud:

- They have engaged in conduct which appears to be intended to circumvent the requirement to be a qualified person, **or***
- They have entered into, attempted to enter into, or assisted another person to (attempt to) enter into a marriage of convenience, **or***
- They have attempted to enter the United Kingdom within 12 months of being removed under regulation 19(3)(a) where the person attempting to do so is unable to provide evidence that, upon re-entry,*

the conditions for any right to reside, other than the initial right of residence, are met, or

· They have fraudulently obtained, attempted to obtain or assisted the (attempted) fraudulent acquisition of a right to reside under the EEA Regulations, and

· It is “proportionate” to proceed with removal given all the circumstances of the case.

...

5.4 Maintaining proportionality on the decision to administratively remove

Consideration must be given to the following factors, to ensure proportionality is maintained when taking a decision to administratively remove an EEA national or their family member.

Each case must be assessed on its individual merits considering the:

- Level of fraud / abuse*
- Personal circumstances*
- Type of decision being taken.*

...

5.4.2 Personal circumstances

Personal circumstances must be taken into account when considering whether a decision under regulation 19(3)(c) is proportionate. This includes regard to the relevant person’s:

- age*
- state of health*
- family ties to the United Kingdom*
- length of residence in the United Kingdom*
- social and cultural integration*
- economic situation.*

...

13 Detention

*EEA nationals and their family members should **not** be detained whilst a decision to administratively remove is pending.*

*HMI/SEO authority must be given for the removal. Following the decision to administratively remove (service of the IS 151A (EEA)), individuals may be detained at the authority of an CIO/HEO, where it is decided upon balance that detention is necessary (i.e. if an individual is suspected of actively engaging in criminality or there is a clear risk of absconding) **and the individual meets the current Home Office criteria for detention.** An HMI/SEO should review detention at the 24 hours point.*

Regulation 19(3)(b) provides an anticipatory power of detention for cases being considered for deportation, meaning that EEA nationals and their family members who meet the criteria may be detained whilst a decision on deport is pending with criminal casework (CC), see

*Deportation of low level persistent offenders. **Should CC decide not to proceed with deportation, detention may only continue lawfully if we proceed with administrative removal instead AND have served an IS 151A (EEA).***

Any decision to detain EEA nationals and their family members prior to removal should not be taken lightly, as this would leave the Home Office open to potential accusations of preventing the individual from exercising Treaty rights, thereby satisfying the criteria for a right to reside.

3. The above passage is significant because it appears to partly reflect the limitations on detention found in the European case law, rather than the Court of Appeal decision in Nouazli.
4. Also relevant is the helpful flow diagram and table found in Appendices A and B of Chapter 50, reproduced below.

APPENDIX 2: Detention powers in the EEA Regulations and related legislation

Powers on entry

No.	Primary provisions	Secondary provisions	Tertiary provisions
1.	<p><u>19(1)</u> exclusion is justified on grounds of public policy, public security or public health ('the policy proviso').</p>	<p><u>21</u> governs decisions based on the policy proviso including proportionality and other matters reflecting the safeguards in <u>Article 27</u> of the Citizens Directive.</p> <p>The decision may only be made on "imperative grounds of public security" (<u>21(4)(a)</u>) in the case of persons continuously resident for 10 years, or persons under 18 where the decision is not necessary in their best interests.</p>	<p><u>22(1)(b)</u> if there is <i>reason to believe</i> an EEA national falls within this ground, they are treated as if they are seeking leave to enter under the 1971 Act (ie. as an illegal entrant).</p> <p>Also see <u>24(4)</u> which makes persons who enter in circumstances where they should have been excluded under <u>19(1)</u> liable to removal under <u>Schedule 2 IA 1971</u>.</p> <p><u>Paragraph 16(2) of Schedule 2 IA 1971</u> provides the power to detain.</p>
2.	<p><u>19(1A)</u> exclusion as a person subject to a deportation or exclusion order.</p>	<p><u>22(1)(b)</u> if there is <i>reason to believe</i> an EEA national falls within this ground, they are treated as if they are seeking leave to enter under the 1971 Act (ie. as an illegal entrant).</p>	<p><u>Paragraph 16(2) of Schedule 2 IA 1971</u> provides the power to detain.</p>
3.	<p><u>19(1AB)</u> admission would lead to the abuse of a right to reside.</p>	<p><u>21B(1)</u> regulates decisions based on abuse. Subject to a requirement of proportionality and <i>reasonable grounds for suspicion</i>.</p>	<p><u>22(1)(b)</u> if there is reason to believe an EEA national falls within this ground, they are treated as if they are seeking leave to enter under the 1971 Act (ie. as an illegal entrant).</p> <p>Also see <u>24(4)</u> which makes persons who enter in circumstances where they should have been excluded under <u>19(1AB)</u> liable to removal under <u>Schedule 2 IA 1971</u>.</p> <p><u>Paragraph 16(2) of Schedule 2 IA 1971</u> provides the power to detain.</p>

Powers after entry

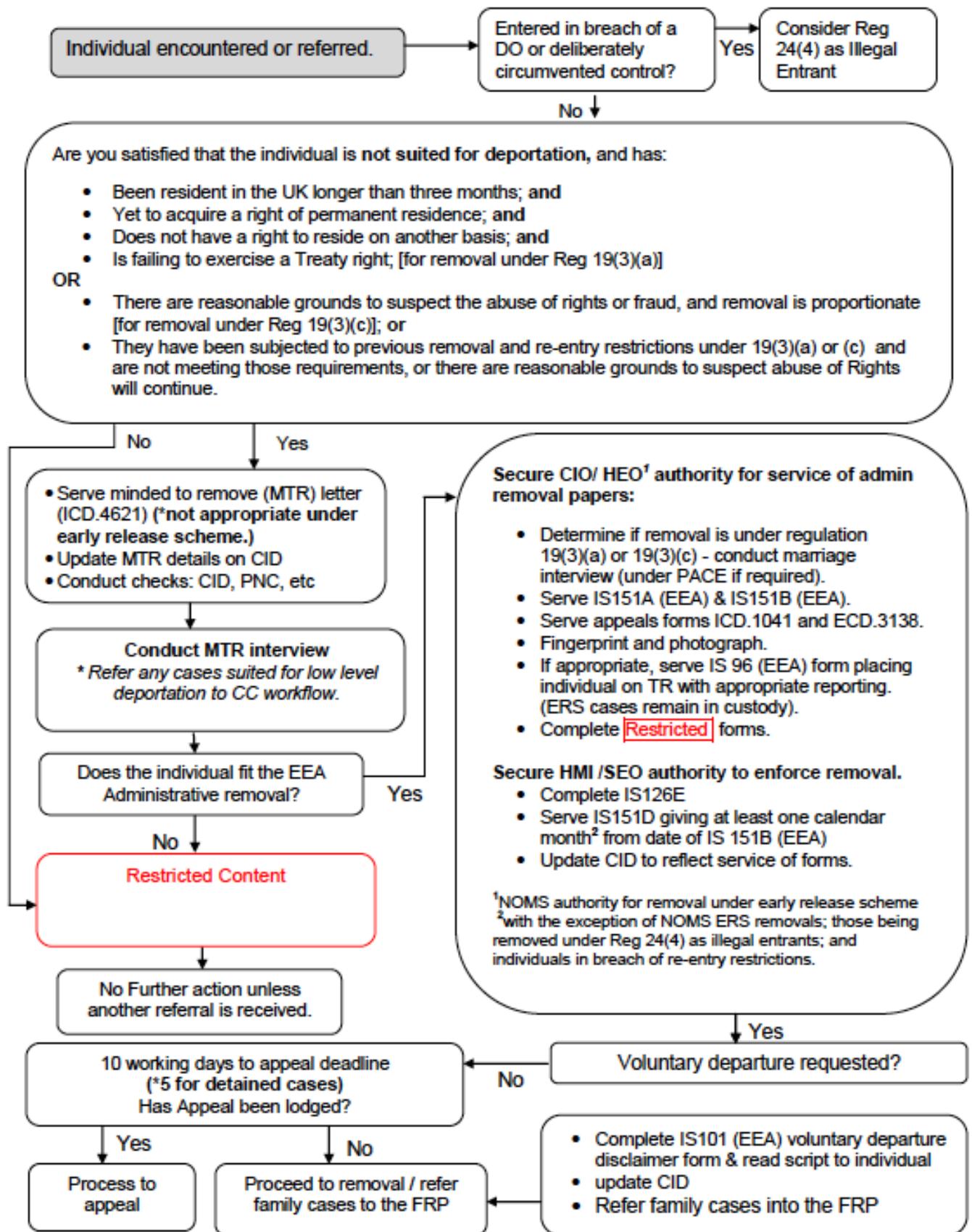
No.	Primary provisions	Secondary provisions	Tertiary provisions
1.	23 a person who has been refused admission but remains in the UK.	19(1), (1A), (1B) provide the grounds for refusing admission.	23(2) treated as if they were refused leave to enter under the 1971 Act (ie. as an illegal overstayer). Paragraph 16(2) of Schedule 2 IA 1971 provides the power to detain. 24(6) 1 month to leave voluntarily except those who entered in breach / urgent cases.
2.	19(3)(a) the person does not have or has ceased to have a right to reside.	24(2) treated as if section 10 of the 1999 Act applies (ie. as an illegal overstayer).	Section 10(7) of the 1999 Act refers to powers under paragraph 16(2) of Schedule 2 IA 1971.
3.	19(3)(b) Secretary of State has decided that removal is justified on grounds of a policy proviso.	21 governs decisions based on the policy proviso including proportionality and other matters reflecting the safeguards in Article 27 of the Citizens Directive (as noted above).	24(1) where there are reasonable grounds to suspect person may be removed under 19(3)(b), they may be detained <i>pending</i> a decision on whether to remove under that regulation and paragraphs 16, 17 to 18 of Schedule 2 IA 1971. 24(3) once a decision based on 19(3)(b) has been <i>taken</i> , the person is treated as if sections 3(5)(a), 5 and Schedule 3 of the 1971 Act applies (ie. deportation provisions).
4.	19(3)(c) Secretary of State has decided that removal is justified on grounds of abuse of rights.	24(2) treated as if they were refused leave to enter under the 1971 Act (ie. as an illegal overstayer).	Section 10(7) of the 1999 Act refers to the powers under paragraph 16(2) of Schedule 2 IA 1971.
5.	24(4) entry in breach of a deportation or exclusion order or where they were not admitted under regulations 19(1) or (1AB).	24(4) Treated as an illegal entrant liable to a detention pending removal under Schedule 2 of the 1971 Act.	Paragraph 16(2) of Schedule 2 IA 1971 provides the power to detain.

Annex A: EEA Admin Removal: Essential Actions Checklist

Essential actions checklist: introduction

The flowchart on the following page gives you a summary of the operational process to follow to make a decision on the administrative removal of an EEA national, or a family member of an EEA national.

Essential actions checklist: flowchart



Annex B: EEA specific forms and summary of powers

EEA specific administrative removal forms	
ICD.4621	Minded to remove letter
IS 151A (EEA)	Notice of liability to remove
IS 151B (EEA)	Notification of decision to remove
IS 101 (EEA)	Voluntary departure disclaimer & script
IS 96 (EEA)	Notification of temporary admission to a person liable to be detained
ICD.0260 EEA	ERS warning letter
ICD.5008	EEA entry in breach of a DO and other illegal entrants (see section 15.2.3)
All forms are located on the CID document generator.	
Summary of powers	
Fingerprint	Section 141(7)(c) Immigration and Asylum Act 1999 – following service of an immigration decision (IS 151B (EEA)) Section 141(7)(d) Immigration and Asylum Act 1999 – following detention under paragraph 16 or arrest under paragraph 17
Photograph	Paragraph 18(2), schedule 2 Where a person is detained under paragraph 16, any immigration officer, constable or prison officer, or any other person authorised by the Secretary of State, may take all such steps as may be reasonably necessary for photographing, measuring or otherwise identifying him. Prior to detention an IO can only photograph by consent.
Arrest	Once a IS 151A (EEA) has been served, an IO or constable may arrest under paragraph 17(1) of schedule 2 to the Immigration Act 1971 as a person liable to be detained under paragraph 16(2) of schedule 2. There is no other power of arrest.
Search	Arrest enables an IO (not constable) to search for relevant documents where they have reasonable grounds to believe they may be found: <ul style="list-style-type: none"> • Search person – paragraph 25B of schedule 2 to the Immigration Act 1971 • Search premises – paragraph 25A of schedule 2 to the Immigration Act 1971
Retention of documents	Section 17 of the 2004 Act allows for the retention of a document, once the IS 151A (EEA) has been served.

Detention	<p>Regulation 24(2) of the 2006 Regulations allows a person to be detained following an administrative removal decision made under those Regulations. Regulation 24(2) applies section 10 of the 1999 Act, section 10(7) of the 1999 Act applies the detention power contained in paragraph 16(2) of schedule 2 to the 1971 Act. Detention must comply with criteria in guidance (Chapter 55 EIG).</p> <p>CIO/HEO authority required to detain. HMI/SEO authority required at 24 hour review.</p>
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