HOUSE OF COMMONS LIBRARY

BRIEFING PAPER

Number 7035, 21 July 2016

'Visa bans': Powers to refuse or revoke immigration permission for reasons of character, conduct or associations

By Melanie Gower

Inside:

Contents

Summary

Powers to exclude

The Home Secretary and immigration officials are able to refuse permission to enter the UK, or revoke permission already granted, for reasons related to an individual's character, conduct or associations. It is also possible for the Home Secretary to exclude a person even if they have not indicated an intention to travel to the UK.

There is no statutory right of appeal against exclusion by the Home Secretary, although individuals can challenge the decision through judicial review.

The 'unacceptable behaviours' policy

In August 2005 the Home Office published an indicative list of "unacceptable behaviours" which can also lead to exclusion by the Home Secretary. These include using any means or medium to express views which foment, justify or glorify terrorist violence or other serious criminal activity or seek to provoke others to commit such acts, or which foster hatred which might lead to inter-community violence in the UK.

How widely are the exclusion powers exercised?

In a speech delivered to the Royal United Services Institute in late November 2014, the then Home Secretary said that she had excluded "hundreds" of people from the UK. There is some information about the use of exclusion powers in the public domain, but the Government does not routinely comment on individual immigration or exclusion decisions.

Powers to deny entry based on criminal convictions

All arriving passengers are checked against police, security and immigration watch lists upon arrival in the UK. Previous criminal behavior is one of the grounds on which Border Force staff may refuse entry to European Economic Area (EEA) and non-EEA nationals.

Depending on the nature of the sentence, previous criminal convictions can result in non-EEA nationals being subject to a 're-entry ban' for a specified length of time. In contrast, criminal convictions do not automatically justify expulsion of EEA nationals. EU law requires that expulsion/refusal of entry decisions are based on an assessment of the individual facts of the case.

Areas of recent Parliamentary interest

Questions have been asked about the effectiveness of mechanisms to identify in advance individuals who might pose a threat to the UK (whether for reasons related to extremism or general criminality), and whether EU law gives sufficient scope to prevent the 'free movement of criminals'. To a significant extent, processes depend on information being provided by the individual or authorities in their country of residence. The Government has been a keen supporter of measures to enhance information sharing between EU and non-EU states about individuals' criminal records.

The Government's policy of not confirming details of exclusion decisions has also been the subject of some scrutiny.

1. Policy and powers to exclude or revoke visas

1.1 Government policy

Speaking on behalf of the Government, Karen Bradley, summarised the Home Office's approach to using general powers to exclude individuals from the UK in a Westminster Hall debate on Transparency of UK Visa bans in April 2014:

> … where credible evidence exists, the immigration rules allow us to deny entry to those whose presence in this country is not considered conducive to the public good. The power to deny a person the ability to enter the UK is an important tool that has the potential to support key Government objectives across a range of matters including national security, terrorism, criminality, war crimes and human rights abuses.
>
> The Home Secretary may also personally decide to exclude an individual who is not a British citizen. Individuals can be excluded on grounds of national security; on the grounds that their presence in the United Kingdom is not conducive to the public good; or under the unacceptable behaviours or extremism exclusion policy. Exclusion is not targeted against any religious group or proponents of any individual political position. Individuals excluded have included serious criminals, far-right extremists, homophobic extremists, and Christian, Jewish and Islamic extremists.
>
> Exclusion powers are taken very seriously and we do not use them lightly. No decision to exclude is taken lightly or as a method of stopping debate on the issues. There is close partnership working across Government to identify those who should be excluded from the UK and to prevent them from travelling here. The Secretary of State will use those powers when justified, based on all the available evidence. In all matters, the Secretary of State must act reasonably, proportionately and consistently.[1]

The Immigration Rules allow for entry to be denied on 'presence non-conducive to the public good' grounds

The Home Secretary also has personal powers to exclude individuals for public good, national security or unacceptable behaviour reasons

A 2011 article in *The Independent* reported the then Home Secretary, Theresa May, as saying that the Government was taking a more interventionist approach to using exclusion powers than may have been the case under Labour.[2] In a speech delivered to the Royal United Services Institute in late November 2014, Mrs May said that she had excluded "hundreds" of people from the UK in total since becoming Home Secretary. In particular, she highlighted having excluded 61 people on national security grounds and 72 people on 'non-conducive to the public good' grounds, and said that she had excluded 84 'hate preachers'.[3]

1 HC Deb 2 April 2014 c299WH
2 *The Independent*, "Home Secretary Theresa May defends Sheikh Raed Salah exclusion decision", 20 September 2011
3 RUSI, events, 'Home Secretary Theresa May on the Terrorist Threat', 24 November 2014

1.2 General powers to exclude individuals from the UK or revoke visas

EEA nationals

The 'free movement of persons' directive allows for the exclusion of EEA nationals on public policy, public security or public health grounds

The 'Free Movement of Persons' Directive (EC Directive 2004/38/EC), which has been transposed into domestic law by the *Immigration (European Economic Area) Regulations 2006* ('the 2006 Regulations'), gives scope to exclude EEA nationals or withdraw their 'right to reside' in the UK on grounds of public policy, public security or public health.[4]

The provisions in the 2006 regulations include allowing for the Home Secretary to make an exclusion order against an EEA national or their family member whilst they are outside the UK (including at a UK port of entry).[5] Exclusion can be used against individuals whose behaviour or actions could fall within the scope of UK criminal legislation, whether or not they have been charged.

In accordance with the Directive, the 2006 regulations provide for a right of appeal against exclusion from the UK. In 2009 the Dutch MP Geert Wilders successfully appealed against the Home Secretary's decision to exclude him from the UK.[6]

Exclusion orders remain in force unless revoked by the Home Secretary. A person subject to an exclusion order can apply from outside the UK for the order to be revoked, supported by evidence of a material change in circumstances. There is also a right of appeal against a decision to refuse to revoke an exclusion order. Individuals who seek to enter the UK in breach of an exclusion order would be liable to refusal entry or removal from the UK (depending on when they are encountered).

The Home Office's *Modernised Guidance* on Exclusion of EEA nationals and their family members from the UK contains further information.[7]

Non-EEA nationals

Section 3(5)(a) of the Immigration Act 1971 (as amended) provides that a person who is not a British citizen is liable to deportation if the Secretary of State deems his deportation to be "conducive to the public good." Whilst this section does not specifically refer to a power to exclude, paragraph 320(6) of the Immigration Rules states that entry to the UK is to be refused

> where the Secretary of State has personally directed that the exclusion of a person from the United Kingdom is conducive to the public good[8]

The circumstances in which the Home Secretary can exercise her personal power to exclude are not constrained by statute, and she can

---

4 Transposed by SI 2006/1003 (as amended)
5 SI 2006/1003 (as amended), regulation 19(1B)
6 [2009] UKAIT 50
7 GOV.UK, *Modernised Guidance*, Exclusion of EEA nationals and their family members, 27 January 2014
8 Immigration Rules (HC 395 of 1993-4 as amended)

decide to exclude a person from the UK even if they have not sought permission to enter:

> **Lord West of Spithead:** An individual does not have to have applied to come to the UK in order to be considered for exclusion. Any person whose presence in the UK is not considered conducive to the public good may be excluded. (...)
>
> The Home Secretary may personally decide that an individual should be excluded from the UK because she considers that their exclusion is justified. This personal power is normally exercised on the grounds of national security, unacceptable behaviours, public order or relations with a third country, but this is a matter of policy not statute. The power is in fact broad and can be used in any circumstances, provided it is exercised reasonably, proportionately and consistently. An individual excluded by the Home Secretary must be refused entry to the UK, in accordance with paragraph 320(6) of the immigration rules.[9]

The Home Secretary's powers to exclude non-EEA nationals are not defined by statute, and can be applied against people who have not sought permission to enter the UK

The introduction of the "unacceptable behaviours" policy in August 2005 broadened the scope for exercising this power (discussed further in section 1.2 below).

There is no statutory right of appeal against an exclusion by the Home Secretary, although affected individuals could seek a judicial review.[10] A PQ answered in early 2010 said that decisions to exclude are usually reviewed every three years, but otherwise remain in place unless the Home Secretary decides to lift the exclusion.[11] It is open to excluded individuals to apply to the Home Secretary for the exclusion order to be lifted.

Furthermore, non-EEA nationals seeking permission to enter or remain in the UK are subject to the various general grounds for refusal within Part 9 of the Immigration Rules (as well as the specific eligibility criteria for the relevant visa category).[12] These general grounds include considerations related to a person's behaviour, character, conduct or associations.

In particular, paragraph 320(19) gives immigration staff scope to refuse entry on grounds similar to the Home Secretary's, by providing that entry should "normally" be refused if

> The immigration officer deems the exclusion of the person from the United Kingdom to be conducive to the public good. For example, because the person's conduct (including convictions which do not fall within paragraph 320(2)), character, associations, or other reasons, make it undesirable to grant them leave to enter.

Home Office policy guidance to staff handling visa applications gives an indication of the type of behaviour which might warrant refusal under paragraph 320(19):

---

9 HL Deb 1 June 2009 cWA41

10 For an example of a judicial review which (unsuccessfully) sought to challenge a decision to refuse entry upon arrival to the UK, see [2010] EWHC 2825 (Admin) brought by Dr Zakir Naik, a Muslim writer and speaker who was refused entry on non-conducive to the public good grounds in June 2010.

11 HC Deb 14 January 2010 c1092W

12 Immigration Rules (HC 395 of 1993-4, as amended), Part 9 (paras A320 – 324)

> (…) While a person does not necessarily need to have been convicted of a criminal offence, the key to establishing refusal in this category will be the existence of reliable evidence necessary to support the decision that the person's behaviour calls into question their character and/or conduct and/or associations such that it makes it undesirable to grant them entry clearance.
>
> A non-exhaustive list could include:
>
> > Low-level criminal activity. Association with known criminals. Involvement with gangs. Pending prosecutions. Extradition requests. public order risks. Prescribed organisations. Unacceptable behaviours. Subject to a travel ban. War crimes. Article 1F of the refugee convention. Deliberate debiting. Proceeds of crime and finances of questionable origins. Corruption. Relations between the UK and elsewhere. Assisting in the invasion [sic] of the immigration control. Hiring illegal workers. Engaging in deceitful or dishonest dealings with Her Majesty's Government[13]

The process for notifying individuals of an exclusion decision is likely to depend on the circumstances of the case, and at what stage in the application/travel process the decision to exclude was taken. In an answer to a PQ in 2009, the then Government stated that individuals are notified of a decision to exclude based on unacceptable behaviour where it is possible to do so.[14]

Some of the other general grounds for refusal, such as an applicant's criminal history in the UK or elsewhere, and if an applicant has previously breached the UK's immigration laws, also effectively impose bans on individuals returning to the UK in certain circumstances (discussed further in section 1.4).

The Immigration Rules also allow for individuals who have already been issued with permission to enter/remain in the UK to be refused entry, or have their leave cancelled whilst they are outside the UK or upon arrival in the UK. Some of the grounds for doing so effectively mirror those outlined above.[15] Leave to enter or remain in the UK can also be curtailed on various grounds, including

> (5) the undesirability of permitting the person concerned to remain in the United Kingdom in the light of his conduct (including convictions which do not fall within paragraph 322(1C), character or associations or the fact that he represents a threat to national security;[16]

The Home Office's *Modernised Guidance* on General grounds for refusal contains further information about all of the general grounds for refusal in the Immigration Rules (although many parts of the commentary are not publicly available).[17]

---

13 Home Office, *Entry Clearance Guidance*, RFL09, 14 November 2013
14 HC Deb 14 January 2010 c1092W
15 Immigration Rules, para 321, 321A
16 Immigration Rules, para 323(i) read with para 322(5A)
17 GOV.UK, *Modernised Guidance*, Cross-cutting information – General grounds for refusal, 20 April 2016

Excluding people subject to EU or UN travel bans

Decisions to impose a UN travel ban are made by the UN Security Council. Decisions to make an EU travel ban are made by instruments of the Council of the European Union.

If a person is subject to a UN or EU travel ban, the UK is obliged to prevent their entry to or transit through the UK. Section 8B of the *Immigration Act 1971* (as amended) provided for people subject to UN or EU travel bans to be excluded from the UK, when they had been designated by Order.[18] Section 76 of the *Immigration Act 2016* (in force from 12 July 2016) removed the need to update secondary legislation in order to implement an international travel ban, in order that the bans can take immediate effect. A banned person is excluded from the UK and must be refused leave to enter or remain in the UK, or have any existing permission cancelled.

1.3 Powers under the "unacceptable behaviours" policy

The "unacceptable behaviours" policy emerged from a review of the Home Secretary's powers to exclude individuals, which was conducted in the aftermath of the July 2005 London bombings.

The then Home Secretary, Charles Clarke, signalled an intention to apply the exclusion powers more broadly and systematically, so that they could be used to exclude individuals "who foment terrorism, or seek to provoke others to commit terrorist acts".[19]

In August 2005, after a short consultation, the Home Office published an indicative list of "unacceptable behaviours" which would trigger consideration of exclusion.[20] The list was re-published in 2015, in an answer to a PQ:

> **Exclusion Orders: Written question - HL4168**
>
> Asked by Lord Warner Asked on: 14 January 2015
>
> To ask Her Majesty's Government, further to the Written Answer by Lord Bates on 6 January (HL3867), whether they will publish the list of non-exhaustive indicators of unacceptable behaviours that could lead to the exclusion of a foreign national from the United Kingdom.
>
> Answered by: Lord Bates Answered on: 22 January 2015
>
> The list of unacceptable behaviours is indicative rather than exhaustive. It covers any non-UK national whether in the UK or abroad who uses any means or medium including:
>
> • writing, producing, publishing or distributing material;
>
> • public speaking including preaching
>
> • running a website; or

---

18 Most recently, SI 2000/2724, as amended

19 HC Deb 20 July 2005 c1255-6

20 Home Office, press release, 124/2005 'Tackling Terrorism-Behaviours unacceptable in the UK', 25 August 2005 (available from Statewatch website; accessed 24 November 2014)

> • using a position of responsibility such as teacher, community or youth leader
>
> To express views which:
>
> • foment, justify or glorify terrorist violence in furtherance of particular beliefs;
>
> • seek to provoke others to terrorist acts;
>
> • foment other serious criminal activity or seek to provoke others to serious criminal acts or;
>
> • foster hatred which might lead to inter-community violence in the UK
>
> The list was finalised in August 2005 following a consultation.[21]

Charles Clarke outlined the potential consequences of engaging in unacceptable behaviour on a person's immigration permission in July 2005. He said that officials from the Home Office, Foreign Office and intelligence agencies would establish "a full database of individuals around the world who have demonstrated the relevant behaviours", and that such information would be available to visa and immigration staff and added to the UK's 'Warnings Index'. Inclusion on the database would trigger the possibility of a Ministerial decision to exclude. Exclusion would be considered when there were grounds for considering that an individual had been engaged in such activities, or would do so in the UK. Furthermore, migrants already in the UK would also be subject to the unacceptable behaviours policy, so that engagement in such activity could result in the termination of their immigration status and removal from the UK.[22]

Some adjustments to the exclusion policy were announced in October 2008. These included creating a presumption in favour of exclusion when individuals had engaged in the types of unacceptable behaviour previously identified, placing the burden of proof on excluded individuals to demonstrate that they had repudiated their extremist views, and making greater use of UK watch lists in order to identify individuals who might fall for exclusion.[23]

A 2009 Home Office press release gave some details about the number of people excluded from the UK between August 2005 and March 2009 under the policy:

> In the period from August 2005 to 31 March 2009, a total of 101 individuals have been excluded from the UK for having engaged in unacceptable behaviour. Of these 101 individuals, a total of 22 were excluded by the Home Secretary in the period from 28 October 2008 to 31 March 2009.
>
> This figure comprises 72 individuals excluded for fomenting, justifying or glorifying terrorist violence in furtherance of particular beliefs; two individuals excluded for seeking to provoke others to terrorist acts; 18 individuals excluded for fomenting other serious criminal activity or seeking to provoke others to serious criminal

21 Written Question HL4168, answered on 22 January 2015
22 HC Deb 20 July 2005 c1255-6
23 HC Deb 28 October 2008 c28WS

acts; and nine individuals excluded for fostering hatred which might lead to inter-community violence in the UK.

The individuals concerned include animal rights extremists, right to life extremists, homophobe extremists, far-right extremists, as well as advocates of hatred and violence in support of their religious beliefs.

1.4 Powers to deny entry on the basis of criminal convictions (in detail)

Non-EEA nationals

As previously referred to in section 1.2, the 'general grounds for refusal' in Part 9 of the UK's Immigration Rules include scope to refuse entry to the UK on the basis of a person's character, conduct or associations.

Paragraph 320 of the Immigration Rules details circumstances in which entry clearance or leave to enter must be, or should normally, be refused.

The circumstances for a mandatory refusal include:

- **If the person seeking entry has been convicted of an offence for which they have been sentenced to a period of imprisonment.**[24] In particular, the Rules apply:
  - Indefinite bans – if the person has been convicted of an offence for which they have been sentenced to at least four years imprisonment;
  - A ten year ban – if the person has been sentenced to between 12 months and four years imprisonment; or
  - A five year ban – if the person has been sentenced to less than 12 months imprisonment
- **If the person has failed to provide a criminal record certificate** from the relevant authority in any country in which they have been resident for 12 months or more in the past ten years, if required to do so.
- **If the person has previously breached the UK's immigration laws** (and was over the age of 18) by overstaying (unless for 90 days or less, and departure from the UK was voluntary and not at public expense); breaching a condition of leave; being an illegal entrant; or using deception in an immigration application. In particular, the Rules apply:
  - A ten year ban for using deception in an application
  - A 12 month ban – if the person made a voluntary departure from the UK and not at public expense
  - A two year ban – if the person made a voluntary departure from the UK at public expense within six months of

[24] In these circumstances, the public interest in maintaining refusal will only be outweighed by compelling factors in exceptional circumstances, unless refusal would be contrary to the UK's international obligations under refugee and human rights law.

exhausting their appeal rights/being notified of liability for removal

- A five year ban – if the person made a voluntary departure at public expense
- A ten year ban – if the person was removed or deported from the UK
- A five year ban – if the person left or was removed from the UK as a condition of a caution issued under section 22 of the *Criminal Justice Act 2003*

The circumstances in which entry clearance or leave to remain should normally be refused include:

- **If, within the past 12 months, the applicant has been convicted of or admitted an offence for which they received a non-custodial sentence or other out of court disposal** which is recorded on their criminal record
- **If, in the view of the Secretary of State, the person's offending has caused serious harm or the person is a persistent offender** who shows a particular disregard for the law
- The Immigration Officer deems the person's exclusion conducive to the public good

The general grounds for refusal also allow for revocations of entry clearance and curtailment of leave to remain in the UK, on similar grounds.

How the powers are applied in practice

The visa application process includes questions about previous criminal convictions. Making false representations, submitting false information or false documents, or failing to disclose material facts in relation to the application are grounds for a mandatory refusal of leave to enter/remain.

Since September 2015, certain visa categories have required the applicant to provide an overseas criminal record certificate in support of their application. The Government intends to extend this requirement to other visa applicants in due course.[25]

Some nationalities are required to apply for a visa in advance of travel to the UK for any purpose/duration. Other nationalities ("non-visa nationals") do not need to apply for a visa in advance of a standard visit to the UK, but do need to apply for a visa for entry for any other purpose (e.g. to work or study here).

All non-EEA nationals must go through passport control upon arrival in the UK. As part of this process, they must satisfy the immigration officer that they qualify for entry to the UK, with reference to the relevant parts of the UK's Immigration Rules. All arriving passengers are checked against police, security and immigration watchlists upon arrival.

---

25 Written Question 21033, answered on 13 January 2016

The UKVI *Modernised policy guidance* on General grounds for refusal provides a more detailed overview of the exercise of these powers.

EEA nationals

Under Article 27 of the 'Free Movement of Persons' Directive, an EU citizen cannot be excluded from entering a country solely on the grounds of a previous criminal conviction. Exclusion measures taken on the grounds of public policy or public security must be proportionate and "based exclusively on the personal conduct of the individual concerned". Furthermore, "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. (…)."

The 'New Settlement for the United Kingdom within the European Union', agreed at the European Council meeting on 19 February, included a commitment from the Commission to clarify how to apply these provisions, in a future Communication.[26] However, the new settlement will not be implemented in light of the UK vote to leave the EU.

How the powers are applied in practice

Upon arrival in the UK, Border Force officials confirm the identity of EEA nationals, and check their details against the UK's Warnings Index watch list and inspect their passports, in order to identify whether entry should be refused. Information received from foreign law authorities about individuals who might pose a risk to public protection and who may be present in or coming to the UK is included on the watch list. Information about individuals who have been extradited from the UK, or deported as a result of their criminal record, may also be included.[27]

---

[26] It had indicated that in assessing whether an individual's personal conduct is likely to represent a genuine and serious threat to public policy or security, Member States may take into account the individual's past conduct, and the threat may not always need to be imminent. Furthermore, Member States may act on preventative grounds as long as they are specific to the individual concerned, including in cases where there is no previous criminal conviction.

[27] HC Deb 6 December 2011 c206-7W

2. Areas of recent Parliamentary interest

2.1 Effectiveness of mechanisms to identify grounds for exclusion pre-entry

Identifying potential extremist threats

Concerns have been raised about the effectiveness of mechanisms to identify cases potentially suitable for exclusion before entry to the UK

Doubts have been raised about the effectiveness of processes to ensure that visa decision-makers have information about individuals who may pose a threat to the UK.

Siobhain McDonagh raised concerns about potential extremists being able to gain entry to the UK during a recent Westminster Hall debate on UK Security and Entry Clearance Procedures. She argued that "inadequate Home Office entry clearance procedures are allowing the entry into this country of individuals who pose a direct threat to our democracy and our social cohesion", and cited some individual case examples.

Ms McDonagh pressed the then Minister for Immigration, James Brokenshire, to provide more information about the extent to which Home Office staff conduct monitoring of hate speech overseas and online, and whether they proactively check whether visa applicants have promoted hatred and extremism, in order to inform visa decisions.

Mr Brokenshire said:

> Although I cannot comment on particular cases, the current Home Secretary has excluded more than 100 hate preachers from the UK since May 2010, which is more than any previous Home Secretary. Our special cases unit works with language and other experts to look at social media and other media to identify those who may pose a threat and therefore may need to be considered for such action. The Home Office has a sense of purpose and seriousness in addressing those who could pose a threat.[28]

Preventing the 'free movement of criminals'

Similar concerns have been raised in respect of the effectiveness of powers to deny entry to people with criminal convictions. In recent years there has been particular interest in how the powers are used in respect of EEA nationals, since they are not required to apply for a visa in advance of travel to the UK, due to their 'free movement' rights under EU law.

All arriving passengers (EEA and non-EEA) are checked against police, security and immigration watchlists upon arrival in the UK, and Border Force staff have powers to refuse entry to EEA and non-EEA nationals on grounds including previous criminal behaviour, concerns about character, conduct or associations, and security. A January 2015 Home Office response to a public petition on border controls indicated the central importance of information provided by the individual or

[28] HC Deb 29 June 2016 c113WH

authorities in their country of residence, and highlighted action being taken by the Government to strengthen information exchange mechanisms:

> The Government have detailed arrangements in place to identify people of concern who are attempting to enter the UK. All passengers are checked against police, security and immigration watchlists upon arrival and, where the Government are aware of individuals who pose a risk, Border Force officers can—and do—refuse them entry.
>
> The Government operate a framework of mandatory bans on non European Economic Area (EEA) foreign criminals entering the UK, where the Government are aware of their offending.
>
> (…)
>
> All non EEA nationals who are applying to come and stay in the UK for six months or longer are required to disclose any criminal convictions. Where someone has failed to disclose a criminal conviction and the conviction is subsequently discovered, action can be taken to curtail their immigration status because of the deception.
>
> The Government are working with a number of countries to improve the exchange of information about offenders and has signed information sharing agreements with Albania, Australia, Canada, Ghana, Jamaica, New Zealand and the United States.
>
> Where the Government receive information that a European economic area national presents a genuine threat to society, the Government are able to take action to prevent entry to the UK. A criminal conviction, depending on the circumstances, may be enough evidence to show that an EEA national is a present and genuine threat to society.
>
> The onus for flagging such individuals lies with the authorities in their home country and the Government are leading the way in Europe on improving the exchange of information in cases involving dangerous criminals. The Government are one of the biggest users of the European criminal record information system (ECRIS) and is finalising preparations to connect to the second generation Schengen information system (SIS II) which will allow us to identify individuals wanted by other European law enforcement agencies at our borders, including those subject to a European arrest warrant (EAW).[29]

As referred to above, in terms of information-sharing between EU Member States, the UK participates in the European Criminal Record Information System (ECRIS). This is a database which facilitates the exchange of criminal record information between Member States upon request. Responsibility for recording criminal convictions rests with the relevant authorities in individual Member States, and there may be differences in practices between Member States (for example, in relation to how long they retain information about spent convictions for serious crimes).

The current and previous Governments have been strong supporters of further measures to enhance cooperation and information sharing between Member States, in order to prevent the 'free movement of

---

29 HC Deb 12 January 2015 c7-8P

criminals'.[30] The UK led the Serious Offending by Mobile European Criminals (SOMEC) project, which was established to examine arrangements for the management and exchange of data on mobile serious sexual and violent offenders across the EU. The project's final report made a number of recommendations, as summarised in a related Home Office news release of January 2016:

> The report includes a number of recommendations, including calls for the European Criminal Record Information System (ECRIS) to be used more effectively by Member States to identify offenders on whom information should be exchanged. It also recommends that joint training on information exchange should be pursued nationally across judicial, law enforcement and offender management agencies to improve information exchange at a domestic level.[31]

2.2 Policy on publicising excluded cases

From time to time, details of individual cases come into the public domain, in the context of campaigns to persuade the Home Secretary to exercise her exclusion powers (or not, as the case may be).[32]

It is not Government policy to publish information as a matter of routine on the number or identity of individuals excluded from the UK

It is not Government policy to publish information on the number or identity of individuals who have had their immigration permission revoked or been excluded from the UK as a matter of routine. Details of individuals 'banned' from the UK may be made public where there is a clear public interest or where the individual has already put the information in the public domain.

Karen Bradley, then a junior Home Office Minister, explained the reasons for this approach during a debate in April 2014. She emphasised that publicity may not help to change behaviours:

> We do not routinely publish the names of individuals who are prevented from entering the UK. The Home Secretary and her officials use such powers to protect national security, to prevent extremists and terrorists from coming to the UK, and to disrupt the activities of serious criminals. When those powers are exercised, public disclosure of the names of the individuals concerned does not always assist in achieving those aims.
>
> It is important that we use those powers to achieve the best results in protecting the UK and the British public. That is most often achieved without the glare of publicity, particularly when we are seeking to cause a change in behaviour. My hon. Friend the Member for Esher and Walton will appreciate that once it has been made public that a person has been banned from or refused entry to the UK—and so their reputation has been affected—they have less to gain by moderating their behaviour.
>
> Furthermore, the Home Office has a duty of confidentiality, and the details of individual immigration cases will not routinely be made public. Where it is considered that there is a strong public interest in doing so, which clearly outweighs our duty to

30 GOV.UK, Home Office, *News Story*, 'Minister urges crackdown on free movement of criminals', 8 November 2014
31 GOV.UK, Home Office, *News Story*, 'New report urges joined-up working on serious offenders', 21 January 2016
32 See, for example, HC Deb 4 February 2016 c1083; HC Deb 18 January 2016 c437WH

> individuals, and there is sufficient information to confirm individual identity, the Home Office will disclose names. In exceptional circumstances, we occasionally confirm that an individual has been denied entry to the UK when the information is already in the public domain or there is a legitimate public interest in doing so, but it is certainly not routine or regular.
>
> (…)
>
> As my hon. Friend will be aware, that is a long-standing position that successive Governments have adopted.
>
> (…)
>
> It is right that Ministers consider whether making details public can support our aims. That is one of the tools that can be used to increase the effectiveness of the ban, but it can be done only on a case by case basis, taking into account the individual circumstances. It would of course reflect the impact on the individual concerned and the wider policy aim, as well as the impact on wider Government objectives.[33]

Dominic Raab intervened to challenge the Minister:

> **Mr Raab:** The Minister is setting out the Government's position with a degree of clarity that I have not previously heard. She talks about the considerations when the Government decide whether to make public the name of someone who has been banned, including whether doing so might deter or correct that behaviour. If we are dealing with people who are complicit in torture and there is enough evidence to substantiate and justify a visa ban, what possible countervailing reason can there be, whether it is to change their behaviour or otherwise, for not making their name public? Would not making their name public deter others?
>
> **Karen Bradley:** My hon. Friend, as always, makes a coherent argument. The point, however, is that a decision to make someone's name public will depend on individual circumstances. A blanket approach would be wrong, because decisions will depend on each case's individual circumstances and evidence. We must consider such decisions on a case by case basis, rather than having an overriding one-size-fits-all approach to all cases involving, for example, torture.[34]

The previous Labour Government did briefly adopt a policy of publicising details of individuals who had been excluded for engagement in "unacceptable behaviour".

In May 2009 the Home Office published the names of 16 people who had been excluded between October 2008 and March 2009 "for fostering extremism or hatred."[35] The Home Office decided that it was not in the public interest to publish the names of the other six people who had also been excluded on those grounds during that period. The American radio presenter Michael Savage, who had not applied for a visa to come to the UK, was one of the individuals identified. He

---

33 HC Deb 2 April 2014 c299-300WH
34 HC Deb 2 April 2014 c300-302WH
35 Home Office, *press release*, 'Home Office name hate promoters banned from the UK', 5 May 2009 (available from archived version of Home Office website)

objected to his inclusion on the list and threatened to sue the then Home Secretary, Jacqui Smith, for defamation.[36]

The Coalition Government's view was that 'naming and shaming' was the wrong approach, since it "simply invited costly and long-running litigation where it could have been avoided."

Information about individuals excluded from the UK does sometimes come into the public domain.[37] Furthermore, information about the use of the exclusion powers, such as numbers and nationalities and grounds for exclusion, is sometimes released in answer to PQs.[38]

36 The Telegraph [online], "US radio shock jock Michael Savage brands Jacqui Smith a 'witch over UK banned list", 7 May 2009

37 See, for example, BBC News [online], 'US bloggers banned from entering UK', 26 June 2013; "Indian preacher Zakir Naik is banned from UK", 18 June 2010; 'Who does the UK want to keep out?', 12 February 2009

38 See, for example, PQ 213826 (answered on 13 November 2014); HC Deb 18 April 2013 c499W; HC Deb 11 November 2010 c455W; HL Deb 1 July 2010 cWA303-4; HC Deb 7 July 2010 c285W; HC Deb 15 July 2009 c397-8W; HL Deb 24 January 2008 cWA66

BRIEFING PAPER
Number 7035, 21 July 2016

About the Library

The House of Commons Library research service provides MPs and their staff with the impartial briefing and evidence base they need to do their work in scrutinising Government, proposing legislation, and supporting constituents.

As well as providing MPs with a confidential service we publish open briefing papers, which are available on the Parliament website.

Every effort is made to ensure that the information contained in these publically available research briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

If you have any comments on our briefings please email papers@parliament.uk. Authors are available to discuss the content of this briefing only with Members and their staff.

If you have any general questions about the work of the House of Commons you can email hcinfo@parliament.uk.

Disclaimer