

STATEMENT OF CHANGES IN IMMIGRATION RULES

*Presented to Parliament pursuant to section 3(2) of
the Immigration Act 1971*

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¹STATEMENT OF CHANGES IN IMMIGRATION RULES

The Home Secretary has made the changes hereinafter stated in the rules laid down by her as to the practice to be followed in the administration of the Immigration Acts for regulating entry into and the stay of persons in the United Kingdom and contained in the statement laid before Parliament on 23 May 1994 (HC 395) as amended. The amending statements were laid before, or presented to, Parliament on 20 September 1994 (Cm 2663), 26 October 1995 (HC 797), 4 January 1996 (Cm 3073), 7 March 1996 (HC 274), 2 April 1996 (HC329), 29 August 1996 (Cm 3365), 31 October 1996 (HC 31), 27 February 1997 (HC 338), 29 May 1997 (Cm 3669), 5 June 1997 (HC 26), 30 July 1997 (HC 161), 11 May 1998 (Cm 3953), 7 October 1998 (Cm 4065), 18 November 1999 (HC 22), 28 July 2000 (HC 704), 20 September 2000 (Cm 4851), 28 August 2001 (Cm 5253), 16 April 2002 (HC 735), 27 August 2002 (Cm 5597), 7 November 2002 (HC 1301), 26 November 2002 (HC 104), 8 January 2003 (HC 180), 10 February 2003 (HC 389), 31 March 2003 (HC 538), 30 May 2003 (Cm 5829), 24 August 2003 (Cm 5949), 12 November 2003 (HC 1224), 17 December 2003 (HC 95), 12 January 2004 (HC 176), 26 February 2004 (HC 370), 31 March 2004 (HC 464), 29 April 2004 (HC523), 3 August 2004 (Cm 6297), 24 September 2004 (Cm 6339), 18 October 2004 (HC 1112), 20 December 2004 (HC 164), 11 January 2005 (HC 194), 7 February 2005 (HC 302), 22 February 2005 (HC 346), 24 March 2005 (HC 486), 15 June 2005 (HC 104), 12 July 2005 (HC 299), 24 October 2005 (HC 582), 9 November 2005 (HC 645), 21 November 2005 (HC 697), 19 December 2005 (HC 769), 23 January 2006 (HC 819), 1 March 2006 (HC 949), 30 March 2006 (HC 1016), 20 April 2006 (HC 1053), 19 July 2006 (HC 1337), 18 September 2006 (Cm 6918), 7 November 2006 (HC 1702), 11 December 2006 (HC 130), 19 March 2007 (HC 398), 3 April 2007 (Cm 7074), 4 April 2007 (Cm 7075), 7 November 2007 (HC 28), 13 November 2007 (HC 40), 19 November 2007 (HC 82), 6 February 2008 (HC 321), 17 March 2008 (HC 420), 9 June 2008 (HC 607), 10 July 2008 (HC 951), 15 July 2008 (HC 971), 4 November 2008 (HC 1113), 9 February 2009 (HC 227), 9 March 2009 (HC 314), 24 April 2009 (HC 413), 9 September 2009 (Cm 7701), 23 September 2009 (Cm 7711), 10 December 2009 (HC 120), 10 February 2010 (HC 367), 18 March 2010 (HC 439), 28 June 2010 (HC 59), 15 July 2010 (HC 96), 22 July 2010 (HC 382), 19 August 2010 (Cm 7929), 1 October 2010 (Cm 7944), 21 December 2010 (HC 698), 16 March 2011 (HC 863), 31 March 2011 (HC 908), 13 June 2011 (HC 1148), 19 July 2011 (HC 1436), 10 October 2011 (HC 1511), 7 November 2011 (HC 1622), 8 December 2011 (HC 1693), 20 December 2011 (HC 1719), 19 January 2012 (HC 1733), 15 March 2012 (HC 1888), 4 April 2012 (Cm 8337), 13 June 2012 (HC 194), 9 July 2012 (HC 514), 19 July 2012 (Cm 8423), 5 September 2012 (HC 565), 22 November 2012 (HC 760), 12 December 2012 (HC 820), 20 December 2012 (HC 847), 30 January 2013 (HC 943), 7 February 2013 (HC 967), 11 March 2013 (HC 1038), 14 March 2013 (HC 1039), 9 April 2013 (Cm 8599), 10 June 2013 (HC 244), 31 July 2013 (Cm 8690), 6 September 2013 (HC 628), 9 October 2013 (HC 686), 8 November 2013 (HC 803), 9 December 2013 (HC 887), 10 December 2013 (HC 901), 18 December 2013 (HC 938), 10 March 2014

¹ This Statement of Changes can be viewed at <https://www.gov.uk/government/collections/immigration-rules-statement-of-changes>

(HC 1130), 13 March 2014 (HC 1138), 1 April 2014 (HC 1201), 10 June 2014 (HC 198), 10 July 2014 (HC 532), 16 October 2014 (HC 693), 26 February 2015 (HC 1025), 16 March 2015 (HC1116), 13 July 2015 (HC 297), 17 September 2015 (HC 437), 29 October 2015 (HC535), 11 March 2016 (HC 877), 3 November 2016 (HC 667) and 16 March 2017 (HC 1078).

Implementation

The changes set out in this statement shall take effect from 10 August 2017 and will apply to all decisions made on or after that date.

Changes to the Introduction

Intro1. In paragraph 6, in the definition of “**present and settled**” or “**present and settled in the UK**”, for “national with an EEA right to reside in the UK permanently must hold”, in both places where it occurs, substitute “national with a permanent right to reside in the UK under European law must hold either”.

Changes to Appendix FM

FM1. For paragraph GEN.1.10. substitute:

“GEN.1.10. Where paragraph GEN.3.1.(2) or GEN.3.2.(3) applies, and the applicant is granted entry clearance or leave to enter or remain under, as appropriate, paragraph D-ECP.1.2., D-LTRP.1.2., D-ECC.1.1., D-LTRC.1.1., D-ECPT.1.2. or D-LTRPT.1.2., that grant of entry clearance or leave to enter or remain will be subject to a condition of no recourse to public funds unless the decision-maker considers, with reference to paragraph GEN.1.11A., that the applicant should not be subject to such a condition.”.

FM2. In paragraph GEN.1.11., omit “, or where an applicant does not meet the requirements of this Appendix as a partner or parent but the decision-maker grants entry clearance or leave to enter or remain outside the rules on Article 8 grounds,”.

FM3. For paragraph GEN.1.11A. substitute:

“GEN.1.11A. Where entry clearance or leave to remain as a partner, child or parent is granted under paragraph D-ECP.1.2., D-LTRP.1.2., D-ECC.1.1., D-LTRC.1.1., D-ECPT.1.2. or D-LTRPT.1.2., it will normally be granted subject to a condition of no recourse to public funds, unless the applicant has provided the decision-maker with:

(a) satisfactory evidence that the applicant is destitute as defined in section 95 of the Immigration and Asylum Act 1999; or

(b) satisfactory evidence that there are particularly compelling reasons relating to the welfare of a child of a parent in receipt of a very low income.”.

FM4. For paragraph GEN.1.12. substitute:

“GEN.1.12. In this Appendix, “decision-maker” refers, as the case may be, to the Secretary of State, an Immigration Officer or an Entry Clearance Officer.”.

FM5. In paragraph GEN.1.13., for “where the applicant has extant leave at the date of application,” substitute “where at the date of application the applicant has extant leave as a partner or parent (as applicable) granted under this Appendix,”.

FM6. In paragraph GEN.1.14., omit “(or outside the rules on Article 8 grounds)”.

FM7. In paragraph GEN.1.15., omit “, or outside the rules on Article 8 grounds”.

FM8. In paragraph GEN.2.3.(2), at the end of sub-paragraph (a), insert “or”.

FM9. In paragraph GEN.2.3.(2), at the end of sub-paragraph (b), for “; or” substitute “.”.

FM10. In paragraph GEN.2.3.(2), delete sub-paragraph (c).

FM11. After paragraph GEN.2.3. insert:

“Exceptional circumstances

GEN.3.1.(1) Where:

(a) the financial requirement in paragraph E-ECP.3.1., E-LTRP.3.1. (in the context of an application for limited leave to remain as a partner), E-ECC.2.1. or E-LTRC.2.1. applies, and is not met from the specified sources referred to in the relevant paragraph; and

(b) it is evident from the information provided by the applicant that there are exceptional circumstances which could render refusal of entry clearance or leave to remain a breach of Article 8 of the European Convention on Human Rights, because such refusal could result in unjustifiably harsh consequences for the applicant, their partner or a relevant child; then

the decision-maker must consider whether such financial requirement is met through taking into account the sources of income, financial support or funds set out in paragraph 21A(2) of Appendix FM-SE (subject to the considerations in sub-paragraphs (3) to (8) of that paragraph).

(2) Where the financial requirement in paragraph E-ECP.3.1., E-LTRP.3.1. (in the context of an application for limited leave to remain as a partner), E-ECC.2.1. or E-LTRC.2.1. is met following consideration under sub-paragraph (1) (and provided that the other relevant requirements of the Immigration Rules are also met), the applicant will be granted entry clearance or leave to remain under, as appropriate, paragraph D-ECP.1.2., D-LTRP.1.2., D-ECC.1.1. or D-LTRC.1.1. or paragraph 315 or 316B of the Immigration Rules.

GEN.3.2.(1) Subject to sub-paragraph (4), where an application for entry clearance or leave to enter or remain made under this Appendix, or an application for leave to remain which has otherwise been considered under this Appendix, does not otherwise meet the requirements of this Appendix or Part 9 of the Rules, the decision-maker must consider whether the circumstances in sub-paragraph (2) apply.

(2) Where sub-paragraph (1) above applies, the decision-maker must consider, on the basis of the information provided by the applicant, whether there are exceptional circumstances which would render refusal of entry clearance, or leave to enter or remain, a breach of Article 8 of the European Convention on Human Rights, because such refusal would result in unjustifiably harsh consequences for the applicant, their partner, a relevant child or another family member whose Article 8 rights it is evident from that information would be affected by a decision to refuse the application.

(3) Where the exceptional circumstances referred to in sub-paragraph (2) above apply, the applicant will be granted entry clearance or leave to enter or remain under, as appropriate, paragraph D-ECP.1.2., D-LTRP.1.2., D-ECC.1.1., D-LTRC.1.1., D-ECPT.1.2., D-LTRPT.1.2., D-ECDR.1.1. or D-ECDR.1.2.

(4) This paragraph does not apply in the context of applications made under section BPILR or DVILR.

GEN.3.3.(1) In considering an application for entry clearance or leave to enter or remain where paragraph GEN.3.1. or GEN.3.2. applies, the decision-maker must take into account, as a primary consideration, the best interests of any relevant child.

(2) In paragraphs GEN.3.1. and GEN.3.2., and this paragraph, “relevant child” means a person who:

(a) is under the age of 18 years at the date of the application;
and

(b) it is evident from the information provided by the applicant would be affected by a decision to refuse the application.”.

FM12. In paragraph E-ECP.3.2., for “paragraph E-ECP.3.1.” substitute “paragraph E-ECP.3.1.”

FM13. For paragraphs D-ECP.1.1. and D-ECP.1.2. substitute:

“D-ECP.1.1. Except where paragraph GEN.3.1.(2) or GEN.3.2.(3) of this Appendix applies, an applicant who meets the requirements for entry clearance as a partner (other than as a fiancé(e) or proposed civil partner) will be granted entry clearance for an initial period not exceeding 33 months, and subject to a condition of no recourse to public funds, and they will be eligible to apply for settlement after a continuous period of at least 60 months in the UK with leave to enter granted on the basis of such entry clearance or with limited leave to remain as a partner granted under paragraph D-LTRP.1.1. (excluding in all cases any period of leave to enter or limited leave to remain as a fiancé(e) or proposed civil partner); or, where the applicant is a fiancé(e) or proposed civil partner, the applicant will be granted entry clearance for a period not exceeding 6 months, and subject to a prohibition on employment and a condition of no recourse to public funds.

D-ECP.1.2. Where paragraph GEN.3.1.(2) or GEN.3.2.(3) of this Appendix applies, an applicant who meets the requirements for entry clearance as a partner (other than as a fiancé(e) or proposed civil partner) will be granted entry clearance for an initial period not exceeding 33 months, and subject to a condition of no recourse to public funds unless the decision-maker considers, with reference to paragraph GEN.1.11A., that the applicant should not be subject to such a condition, and they will be eligible to apply for settlement after a continuous period of at least 120 months in the UK with leave to enter granted on the basis of such entry clearance or of entry clearance granted under paragraph D-ECP.1.1. or with limited leave to remain as a partner granted under paragraph D-LTRP.1.1. or D-LTRP.1.2. (excluding in all cases any period of leave to enter or limited leave to remain as a fiancé(e) or proposed civil partner); or, where the applicant is a fiancé(e) or proposed civil partner, the applicant will be granted entry clearance for a period not exceeding 6 months, and subject to a prohibition on employment and a condition of no recourse to public funds.

D-ECP.1.3. If the applicant does not meet the requirements for entry clearance as a partner, the application will be refused.”

FM14. In paragraph E-LTRP.3.2., for “paragraph E-LTRP.3.1.” substitute “paragraph E-LTRP.3.1.”

FM15. In paragraph E-LTRP.4.1A., for sub-paragraph (i) substitute:

“(i) in a previous application for entry clearance or leave to remain as a partner or parent, met the English language requirement in paragraph E-ECP.4.1.(b), E-LTRP.4.1.(b), E-ECPT.4.1.(b) or E-LTRPT.5.1.(b) on the

basis that they had passed an English language test in speaking and listening at level A1 of the Common European Framework of Reference for Languages;”.

FM16. In paragraph D-LTRP.1.1., for “with entry clearance as a partner under paragraph D-ECP.1.1. (excluding in all cases any period of entry clearance or limited leave as a fiancé(e) or proposed civil partner);” substitute “with leave to enter granted on the basis of entry clearance granted under paragraph D-ECP.1.1. (excluding in all cases any period of leave to enter or limited leave to remain as a fiancé(e) or proposed civil partner)”.

FM17. For paragraph D-LTRP.1.2. substitute:

“D-LTRP.1.2. If the applicant meets the requirements in paragraph R-LTRP.1.1.(a), (b) and (d) for limited leave to remain as a partner, or paragraph GEN.3.1.(2) or GEN.3.2.(3) applies to an applicant for leave to remain as a partner, the applicant will be granted leave to remain for a period not exceeding 30 months and subject to a condition of no recourse to public funds unless the decision-maker considers, with reference to paragraph GEN.1.11A., that the applicant should not be subject to such a condition, and they will be eligible to apply for settlement after a continuous period of at least 120 months in the UK with such leave, with limited leave to remain as a partner granted under paragraph D-LTRP.1.1., or in the UK with leave to enter granted on the basis of entry clearance as a partner granted under paragraph D-ECP.1.1. or D-ECP.1.2. (excluding in all cases any period of leave to enter or limited leave to remain as a fiancé(e) or proposed civil partner); or, if paragraph E-LTRP.1.11. applies, the applicant will be granted limited leave for a period not exceeding 6 months and subject to a condition of no recourse to public funds and a prohibition on employment.”.

FM18. In paragraph R-ILRP.1.1.(d)(i), for “(but in applying paragraph E-LTRP.3.1.(b)(ii) delete the words “2.5 times”);” substitute “(except that paragraph E-LTRP.1.2. cannot be met on the basis set out in sub-paragraph (c) of that paragraph, and in applying paragraph E-LTRP.3.1.(b)(ii) delete the words “2.5 times”);”.

FM19. In paragraph R-ILRP.1.1.(d)(ii), after “paragraphs E-LTRP.1.2.-1.12.” insert “(except that paragraph E-LTRP.1.2. cannot be met on the basis set out in sub-paragraph (c) of that paragraph)”.

FM20. For paragraph E-ILRP.1.3., substitute:

“E-ILRP.1.3.(1) Subject to sub-paragraph (2), the applicant must, at the date of application, have completed a continuous period of either:

(a) at least 60 months in the UK with:

(i) leave to enter granted on the basis of entry clearance as a partner granted under paragraph D-ECP.1.1.; or

(ii) limited leave to remain as a partner granted under paragraph D-LTRP.1.1.; or

(iii) a combination of (i) and (ii);

or

(b) at least 120 months in the UK with:

(i) leave to enter granted on the basis of entry clearance as a partner granted under paragraph D-ECP.1.1. or D-ECP.1.2.; or

(ii) limited leave to remain as a partner granted under paragraph D-LTRP.1.1. or D-LTRP.1.2.; or

(iii) a combination of (i) and (ii).

(2) In calculating periods of leave for the purposes of sub-paragraph (1) above, any period of leave to enter or limited leave to remain as a fiancé(e) or proposed civil partner will be excluded.”.

FM21. In paragraph EX.1.(a)(ii), for “it would not be reasonable to expect the child to leave the UK; or”, substitute “taking into account their best interests as a primary consideration, it would not be reasonable to expect the child to leave the UK; or”.

FM22. In paragraph E-ECC.1.6., for “or be applying, or have applied, for entry clearance,” substitute “or be being granted, or have been granted, entry clearance,”.

FM23. In paragraph E-ECC.2.2., for “paragraph EECC.2.1.” substitute “paragraph E-ECC.2.1.”.

FM24. In paragraph D-ECC.1.1., for “and subject to a condition of no recourse to public funds” substitute “and will be subject to the same conditions in respect of recourse to public funds as that parent”.

FM25. In paragraph R-LTRC.1.1.(d)(iii), for “paragraph D-LTRP.1.2. or D-LTRPT.1.2” substitute “paragraph D-LTRP.1.2., D-ILRP.1.2., D-LTRPT.1.2. or D-ILRPT.1.2.”.

FM26. In paragraph E-LTRC.2.2., for “paragraph ELTRC.2.1.” substitute “paragraph E-LTRC.2.1.”.

FM27. For paragraphs D-ECPT.1.1. and D-ECPT.1.2., substitute:

“D-ECPT.1.1. If the applicant meets the requirements for entry clearance as a parent (except where paragraph GEN.3.2.(3) applies), the applicant will be granted entry clearance for an initial period not exceeding 33 months, and subject to a condition of no recourse to public funds, and they will be eligible to apply for settlement after a continuous period of at least 60 months in the UK with leave to enter granted on the basis of such entry clearance or with limited leave to remain as a parent granted under paragraph D-LTRPT.1.1.

D-ECPT.1.2. If paragraph GEN.3.2.(3) applies to an applicant for entry clearance as a parent, the applicant will be granted entry clearance for an initial period not exceeding 33 months, and subject to a condition of no recourse to public funds unless the decision-maker considers, with reference to paragraph GEN.1.11A., that the person should not be subject to such a condition, and they will be eligible to apply for settlement after a continuous period of at least 120 months in the UK with leave to enter granted on the basis of such entry clearance or of entry clearance granted under paragraph D-ECPT.1.1. or with limited leave to remain as a parent granted under paragraph D-LTRPT.1.1. or D-LTRPT.1.2.

D-ECPT.1.3. If the applicant does not meet the requirements for entry clearance as a parent, the application will be refused.”.

- FM28. In paragraph E-LTRPT.5.1A.(i), for “paragraph E-LTRPT.5.1.(b) or E-LTRP.4.1.(b)” substitute “paragraph E-ECP.4.1.(b), E-LTRP.4.1.(b), E-ECPT.4.1.(b) or E-LTRPT.5.1.(b)”.
- FM29. In paragraph D-LTRPT.1.1., for “with entry clearance as a parent under paragraph D-ECPT.1.1.” substitute “with leave to enter granted on the basis of entry clearance as a parent granted under paragraph D-ECPT.1.1.”.
- FM30. For paragraph D-LTRPT.1.2., substitute:
- “D-LTRPT.1.2. If the applicant meets the requirements in paragraph R-LTRPT.1.1.(a), (b) and (d) for limited leave to remain as a parent, or paragraph GEN.3.2.(3) applies to an applicant for leave to remain as a parent, the applicant will be granted leave to remain for a period not exceeding 30 months and subject to a condition of no recourse to public funds unless the decision-maker considers, with reference to paragraph GEN.1.11A., that the applicant should not be subject to such a condition, and they will be eligible to apply for settlement after a continuous period of at least 120 months in the UK with such leave, with limited leave to remain as a parent granted under paragraph D-LTRPT.1.1., or in the UK with leave to enter granted on the basis of entry clearance as a parent granted under paragraph D-ECPT.1.1. or D-ECPT.1.2.”.
- FM31. For paragraph E-ILRPT.1.3., substitute:

“E-ILRPT.1.3. The applicant must, at the date of application, have completed a continuous period of either:

(a) at least 60 months in the UK with:

(i) leave to enter granted on the basis of entry clearance as a parent granted under paragraph D-ECPT.1.1.; or

(ii) limited leave to remain as a parent granted under paragraph D-LTRPT.1.1.; or

(iii) a combination of (i) and (ii);

or

(b) at least 120 months in the UK with:

(i) leave to enter granted on the basis of entry clearance as a parent granted under paragraph D-ECPT.1.1. or D-ECPT.1.2.; or

(ii) limited leave to remain as a parent granted under paragraph D-LTRPT.1.1. or D-LTRPT.1.2.; or

(iii) a combination of (i) and (ii).”.

Changes to Appendix FM-SE

FM-SE1. In paragraph 1(b), for “Promises of third party support will not be accepted. Third party support will only be accepted in the form of:” substitute “Promises of third party support will not be accepted, except in the limited circumstances set out in paragraph 21A (and to the extent permitted by that paragraph). Existing sources of third party support will be accepted in the form of:”.

FM-SE2. In paragraph 1(c), delete “only”.

FM-SE3. In paragraph 1(c), after “Appendix FM” insert “, or where paragraph 21A of this Appendix so permits”.

FM-SE4. In paragraph 13, for “will be calculated”, substitute “will, subject to paragraph 21A of this Appendix, be calculated”.

FM-SE5. After paragraph 21 insert:

“Other sources of income, financial support or funds in exceptional circumstances

21A(1). Where paragraph GEN.3.1.(1) of Appendix FM applies, the decision-maker is required to take into account the sources of income, financial support or funds specified in sub-paragraph (2).

(2) Subject to sub-paragraphs (3) to (8), the following sources of income, financial support or funds will be taken into account (in addition to those set out in, as appropriate, paragraph E-ECP.3.2., E-LTRP.3.2., E-ECC.2.2. or E-LTRC.2.2. of Appendix FM):

(a) a credible guarantee of sustainable financial support to the applicant or their partner from a third party;

(b) credible prospective earnings from the sustainable employment or self-employment of the applicant or their partner; or

(c) any other credible and reliable source of income or funds for the applicant or their partner, which is available to them at the date of application or which will become available to them during the period of limited leave applied for.

(3) Where the applicant is a child:

(a) other references in this paragraph to “applicant” mean the “applicant’s parent” under paragraph E-ECC.1.6. or E-LTRC.1.6. of Appendix FM; and

(b) references in this paragraph to “partner” refer to the “applicant’s parent’s partner” under those paragraphs.

(4) The onus is on the applicant to satisfy the decision-maker of the genuineness, credibility and reliability of the source of income, financial support or funds relied upon, on the basis of the information and evidence provided, having regard (in particular, but without limitation) to the factors set out below.

(5) The source of income, financial support or funds must not be a loan, unless evidence submitted with the application shows that:

(a) the source is a mortgage on a residential or commercial property in the UK or overseas which at the date of application is owned by the applicant, their partner or both, or by the third party to whom sub-paragraph (2)(a) refers;

(b) the mortgage is provided by a financial institution regulated by the appropriate regulatory body for the country in which that institution is operating; and

(c) the mortgage payments are reasonably affordable by the person(s) responsible for them and are likely to remain so for the period of limited leave applied for.

(6) Any cash savings or any current financial investment or product relied upon by the applicant under sub-paragraph (2)(c) must at the date of application be in the name(s), and under the control, of the applicant, their partner or both.

(7) Any cash savings relied upon by the applicant must enable the financial requirement in paragraph E-ECP.3.1.(b), E-LTRP.3.1.(b), E-ECC.2.1.(b) or E-LTRC.2.1.(b) of Appendix FM (as applicable) to be met, except that the criteria in sub-paragraph (8)(c) apply in place of the requirements in paragraphs 11 and 11A of this Appendix.

(8) In determining the genuineness, credibility and reliability of the source of income, financial support or funds relied upon under sub-paragraph (2), the decision-maker will take into account all the information and evidence provided, and will consider (in particular):

(a) in respect of a guarantee of sustainable financial support from a third party:

(i) whether the applicant has provided verifiable documentary evidence from the third party in question of their guarantee of financial support;

(ii) whether that evidence is signed, dated and witnessed or otherwise independently verified;

(iii) whether the third party has provided sufficient evidence of their general financial situation to enable the decision-maker to assess the likelihood of the guaranteed financial support continuing for the period of limited leave applied for;

(iv) whether the third party has provided verifiable documentary evidence of the nature, extent and duration of any current or previous financial support which they have provided to the applicant or their partner;

(v) the extent to which this source of financial support is relied upon by the applicant to meet the financial requirement in paragraph E-ECP.3.1., E-LTRP.3.1., E-ECC.2.1. or E-LTRC.2.1. of Appendix FM (as applicable); and

(vi) the likelihood of a change in the third party's financial situation or in their relationship with the applicant or the applicant's partner during the period of limited leave applied for.

(b) in respect of prospective earnings from sustainable employment or self-employment of the applicant or their partner:

(i) whether, at the date of application, a specific offer of employment has been made, or a clear basis for self-employment exists. In either case, such employment or self-employment must be expected to commence within three months of the applicant's arrival in the UK (if the applicant is applying for entry clearance) or within three months of the date of application (if the applicant is applying for leave to remain);

(ii) whether the applicant has provided verifiable documentary evidence of the offer of employment or the basis for self-employment, and, if so, whether that evidence:

(aa) is on the headed notepaper of the company or other organisation offering the employment, or of a company or other organisation which has agreed to purchase the goods or services of the applicant or their partner as a self-employed person;

(bb) is signed, dated and witnessed or otherwise independently verified;

(cc) includes (in respect of an offer of employment) a signed or draft contract of employment;

(dd) includes (in respect of self-employment) any of a signed or draft contract for the provision of goods or services; a signed or draft partnership or franchise agreement; an application to the appropriate authority for a licence to trade; or details of the agreed or proposed purchase or rental of business premises;

(iii) whether, in respect of an offer of employment in the UK, the applicant has provided verifiable documentary evidence:

(aa) of a relevant employment advertisement and employment application;

(bb) of the hours to be worked and the rate of gross pay, which that evidence must establish equals or exceeds the National Living Wage or the National Minimum Wage (as applicable, given the age of the person to be employed) and equals or exceeds the going rate for such work in that part of the UK; and

(cc) which enables the decision-maker to assess the reliability of the offer of employment, including in light of the total size of the workforce and the turnover (annual gross income or sales) of the relevant company or other organisation;

(iv) whether the applicant has provided verifiable documentary evidence that at the date of application, the person to be employed or self-employed is in, or has recently been in, sustained employment or self-employment of the same or a similar type, of the same or a similar level of complexity and at the same or a similar level of responsibility;

(v) whether the applicant has provided verifiable documentary evidence that the person to be employed or self-employed has relevant professional, occupational or educational qualifications and that these are recognised in the UK;

(vi) whether the applicant has provided verifiable documentary evidence that the person to be employed or self-employed has the level of English language skills such prospective employment or self-employment is likely to require;

(vii) the extent to which this source of income is relied upon by the applicant to meet the financial requirement in paragraph E-ECP.3.1., E-LTRP.3.1., E-ECC.2.1. or E-LTRC.2.1. of Appendix FM (as applicable); and

(viii) where an offer of employment is relied upon, and where the proposed employer is a family member or friend of the applicant or their partner, the likelihood of a relevant change in that relationship during the period of limited leave applied for.

(c) in respect of any other credible and reliable source of income or funds for the applicant or their partner:

(i) whether the applicant has provided verifiable documentary evidence of the source;

(ii) whether that evidence is provided by a financial institution regulated by the appropriate regulatory body for the country in which that institution is operating, and is signed, dated and witnessed or otherwise independently verified;

(iii) where the income is or the funds are based on, or derived from, ownership of an asset, whether the applicant has provided verifiable documentary evidence of its current or previous ownership by the applicant, their partner or both;

(iv) whether the applicant has provided sufficient evidence to enable the decision-maker to assess the likelihood of the source of income or funds being available to them during the period of limited leave applied for; and

(v) the extent to which this source of income or funds is relied upon by the applicant to meet the financial requirement in paragraph E-ECP.3.1., E-LTRP.3.1., E-ECC.2.1. or E-LTRC.2.1. of Appendix FM (as applicable).”.

**EXPLANATORY MEMORANDUM TO
THE STATEMENT OF CHANGES IN IMMIGRATION RULES
PRESENTED TO PARLIAMENT ON 20 JULY 2017 (HC 290)**

1. Introduction

1.1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the Instrument

2.1. The purpose of these changes to the family Immigration Rules is to:

- Give effect to the Supreme Court judgment in *MM (Lebanon) & Others v the Secretary for the Home Department* [2017] UKSC 10; and
- Make other minor and technical changes and clarifications to those Rules.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1. None.

Other matters of interest to the House of Commons

3.2. Since the Supreme Court judgment in *MM (Lebanon) & Others* was handed down on 22 February 2017, the Secretary of State has placed a temporary hold on decision-making in respect of applications falling for refusal under the Immigration Rules, in Appendix FM, with which the judgment was concerned. These are applications which fail to meet the minimum income requirement for entry clearance or leave to remain as a partner or child under Appendix FM or which otherwise fall for refusal under Appendix FM and involve a child under the age of 18 years. As of 30 June 2017, there were around 5,000 such applications on hold. The Secretary of State considers that the changes set out in this statement will enable her to decide those and future applications consistently with the findings of the Supreme Court judgment. Those applications which are refused will normally have a right of appeal to the First-tier Tribunal (Immigration and Asylum Chamber) against that decision.

4. Legislative Context

4.1. The Immigration Rules, as laid before Parliament by the Secretary of State, constitute a statement of practice to be followed in the administration of the Immigration Act 1971 for regulating the entry into and stay of persons in the United Kingdom.

4.2. This Statement of Changes in Immigration Rules will be incorporated into a consolidated version of the Immigration Rules, which can be found under the visas and immigration pages of the GOV.UK website at

www.gov.uk/government/collections/immigration-rules where there are also copies of all the Statements of Changes in Immigration Rules issued since May 1994.

4.3. The changes set out in this statement shall take effect from 10 August 2017 and will apply to all decisions made on or after that date.

5. Extent and Territorial Application

5.1. The extent of this Statement of Changes is all of the United Kingdom.

Other matters of interest to the House of Commons

5.2. The territorial application of this Statement of Changes is all of the United Kingdom.

6. European Convention on Human Rights

6.1. As this Statement of Changes in Immigration Rules is not subject to the affirmative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy Background

What is being done and why

7.1. The Supreme Court judgment in *MM (Lebanon) & Others* upheld the lawfulness under Article 8 (the right to respect for private and family life) of the European Convention on Human Rights of the minimum income requirement for entry clearance or leave to remain as a partner or child under the family Immigration Rules in Appendix FM and of the basis, set out in Appendix FM-SE (specified evidence), on which that requirement must generally be met. However, the judgment found (a) that other reliable sources of earnings or finance, beyond those currently permitted under those Appendices, should be taken into account in circumstances where refusal of the application could otherwise breach Article 8; and (b) that Appendix FM did not give direct effect to the Secretary of State's duty under section 55 of the Borders, Citizenship and Immigration Act 2009 to have regard, as a primary consideration, to a child's best interests in an immigration decision affecting them.

7.2. The changes set out in this statement are intended to give effect to those findings. In particular, they insert new general provisions in Appendix FM (paragraphs GEN.3.1. to 3.3.) which:

- Require the decision-maker, in the specified circumstances, to consider whether the minimum income requirement is met if the other sources of income, financial support or funds set out in the new paragraph 21A of Appendix FM-SE are taken into account. The specified circumstances are that, firstly, the minimum income requirement is not otherwise met and, secondly, it is evident from the information provided by the applicant that there are exceptional circumstances which could render refusal of the application a breach of Article 8 because it could result in unjustifiably

harsh consequences for the applicant, their partner or a child under the age of 18 years who it is evident would be affected by a decision to refuse the application;

- Refer to the new paragraph 21A of Appendix FM-SE, inserted by these changes, which makes provision as to the other sources of income, financial support or funds which the decision-maker will take into account in such cases. These are a credible guarantee of sustainable financial support from a third party; credible prospective earnings from the sustainable employment or self-employment of the applicant or their partner; or any other credible and reliable source of income or funds available to the couple. Paragraph 21A also makes provision for particular factors which the decision-maker will consider in determining the genuineness, credibility and reliability of such other source of income, financial support or funds;
- Require the decision-maker, where an application for entry clearance or leave to remain made or considered under Appendix FM does not otherwise meet the relevant requirements of the Immigration Rules, to go on to consider, on the basis of the information provided by the applicant, whether there are exceptional circumstances which would render refusal of the application a breach of Article 8 because it would result in unjustifiably harsh consequences for the applicant or their family. This brings the test of proportionality under Article 8 into the Rules. That test was previously applied by the Secretary of State (through guidance) in considering whether to grant leave outside the Rules on Article 8 grounds. The substance of the test was upheld by the Supreme Court in *Agyarko & Ikuga v the Secretary for the Home Department [2017] UKSC 11*. These changes mean that the Immigration Rules now provide a complete framework for the Secretary of State's consideration on Article 8 grounds of applications under Appendix FM by a partner, child, parent or adult dependent relative; and
- Require the decision-maker, in considering applications under the new general provisions in paragraphs GEN.3.1. to 3.3. of Appendix FM, to have regard, as a primary consideration, to the best interests of any child affected by the decision, thereby giving explicit effect within Appendix FM to the Secretary of State's existing duty under section 55 of the Borders, Citizenship and Immigration Act 2009.

7.3. The changes set out in this statement also:

- Make further consequential provision in respect of the changes arising from the Supreme Court judgment in *MM (Lebanon) & Others*. This includes providing that where the new general provisions in paragraph GEN.3.1. or GEN.3.2. of Appendix FM apply, an applicant granted entry clearance or leave to remain as a partner or parent will be on a 10-year route to settlement (Indefinite Leave to Remain), with scope to apply later to enter the five-year route where they subsequently meet the relevant requirements; and

- Make other minor and technical changes and clarifications to Appendix FM. In particular:
 - ensuring that children are granted leave of the same duration and subject to the same conditions as their parent, who is or has been granted leave under these Rules;
 - ensuring that the partner of a person here with refugee leave or humanitarian protection cannot qualify for Indefinite Leave to Remain before that person has done so; and
 - clarifying the drafting of the English language requirement for further leave to remain as a partner or parent.

8. Consultation

8.1. The rules changes in this statement have not been the subject of a public consultation, as they mainly are for the purposes of giving effect to a Supreme Court judgment.

9. Guidance

9.1. Guidance relating to these rules changes will be updated and placed on the GOV.UK website.

10. Impact

10.1. The rules changes in this statement will have limited or no impact on business, charities, the public sector or voluntary bodies, such that an impact assessment is unnecessary.

11. Regulating small business

11.1. The rules changes in this statement will have limited or no impact on small businesses.

12. Contact

12.1. Queries should be directed to the Home Office as per the 'Contact UKVI' section on the visas and immigration pages of the GOV.UK website at <https://www.gov.uk/government/organisations/uk-visas-and-immigration>.

12.2. Specific written queries relating to this Statement of Changes should be directed to StatementofChanges@homeoffice.gsi.gov.uk. Please note that this mailbox is only for Parliamentary use and specific technical queries regarding the drafting of this Statement of Changes. It is not a contact point for general enquiries. Queries to this e-mail address from outside Parliament about other immigration issues, including how these changes affect applications, will not receive a response.

12.3. A copy of this Statement of Changes can be found on the visa and immigration pages of the GOV.UK website at <https://www.gov.uk/government/collections/immigration-rules-statement-of-changes>.

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