Home Office

Family Policy

Family life (as a partner or parent) and exceptional circumstances

Version 30.0

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About this guidance

This guidance tells decision makers how to decide applications or claims for leave to enter or remain on the basis of family life as a partner or parent or exceptional circumstances in compliance with Article 8 (right to family life of the European Convention on Human Rights (ECHR).

This guidance does not cover applications for children seeking to stay with or join a close relative with protection status in the UK under Appendix Child Relative (Sponsors with Protection). For more information, see Appendix Child Relative (Sponsors with Protection) guidance (internal link).

Contacts

If you have any questions about the guidance and your line manager or senior caseworker cannot help you or you think that the guidance has factual errors then email Family Policy.

If you notice any formatting errors in this guidance (broken links, spelling mistakes and so on) or have any comments about the layout or navigability of the guidance then you can email the Guidance, Rules and Forms team.

Publication

Below is information on when this version of the guidance was published:

- version **30.0**
- published for Home Office staff on **8 October 2026**

Changes from last version of this guidance

Updated to reflect changes to the Immigration Rules to remove the requirement to make a valid application under Appendix FM for those in the Family Returns Process.

Related content
Contents

Purpose

This section tells you about use of this guidance in considering a person's right to enter or remain in the UK on the basis of their family life or exceptional circumstances.

Use of this guidance

This guidance must be used for all decisions:

- under paragraphs 277 to 280, 289AA and 295AA of Part 8 (family transition cases)
- under Appendix FM including on the basis of exceptional circumstances (family life) in accordance with GEN.3.1. to GEN.3.3.

Other information about this guidance

Within this guidance there are links to the Migration, Borders and International Policy and Programmes guidance platform that are shown as an 'internal link' otherwise links are to the same guidance published on GOV.UK for external access.

Related content
Contents

Introduction

This section introduces you to considering applications or claims made to enter or remain in the UK on the basis of family life.

Background

Since 9 July 2012, the Immigration Rules have contained a new framework for considering applications and claims engaging Article 8 of the European Convention on Human Rights (ECHR) (the right to respect for private and family life). Appendix FM to and paragraph 276ADE(1) (now Appendix Private Life) of the Immigration Rules provide the basis on which a person can apply for entry clearance to the UK or leave to remain in the UK on family life grounds or permission to stay here on private life grounds.

Article 8 of the ECHR states that:

> 8(1) Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 8(2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

A family who wishes to come to or remain in the UK, usually chooses to do so because they feel it's in their best interest to do so. A family cannot necessarily exercise that choice however, unless the requirements of the Immigration Rules are met. There are costs to the taxpayer which arise from migration to the UK including for example, provision of education for children of compulsory school age, a sponsor's entitlement to claim tax credit or child benefit for their partner's children and costs arising to the NHS. Being able to speak English aims to encourage integration. Family life must not be established here at the taxpayer's expense and family migrants must be able to integrate if they are to play a full part in British life.

In some cases, families may have to wait before they are able to meet the requirements to enter the UK. In today's global economy it may be that families choose to separate for work or other reasons in order to satisfy the immigration requirements of the country in which they wish to live together.

These rules, together with the guidance on exceptional circumstances and children's best interests contained within it, provide a clear basis for considering immigration cases in compliance with ECHR Article 8, as approved by the Supreme Court in February 2017 in MM (Lebanon) & Others v SSHD [2017] UKSC 10 and Agyarko & Ikuga v SSHD [2017] UKSC 11.

In particular, these rules reflect the qualified nature of Article 8, setting requirements which properly balance the individual right to respect for private or family life with the public interest in safeguarding the economic well-being of the UK by controlling immigration, in protecting the public from foreign criminals and in protecting the rights and freedoms of others.

The policy guidance and Immigration Rules have due regard to the need to safeguard and promote the welfare of children in accordance with the Section 55 duty – see Applications in respect of children section.

The Immigration Act 2014 received Royal Assent on 14 May 2014. From 28 July 2014, section 19 of the act amended the Nationality, Immigration and Asylum Act 2002 to set out Parliament's view of what the public interest requires in immigration cases engaging the qualified right to respect for private and family life under ECHR Article 8. It requires the courts to give due weight to that public interest when deciding such cases. This means that the public interest in the maintenance of effective immigration control and in family migrants being financially independent and able to speak English, as required by the family Immigration Rules, is underpinned in primary legislation.

Consistent with the public interest considerations set out in section 117B of the Nationality, Immigration and Asylum Act 2002, inserted by section 19 of the Immigration Act 2014, and as upheld in the Supreme Court in the case of Rhuppiah [2018] UKSC 58 which provide that little weight should be given to a private life established by a person who is in the UK unlawfully or with precarious immigration status, the private life rules set stringent requirements for permission to stay on the basis of private life in the UK.

A person's immigration status is precarious if they are in the UK unlawfully - if they require leave to enter or remain in the UK but do not have it. For the purposes of this guidance, a person's immigration status is also precarious if they are in the UK with limited leave to enter or remain but without settled or permanent status, or if they have obtained leave fraudulently or been notified that they are liable to deportation or removal.

Where people cannot satisfy the requirements of the 5-year route Immigration Rules to remain in the UK, they are expected to leave, and it is natural to expect that it is reasonable for any child or children to leave with them. Only where there is something in the evidence to suggest it would be unreasonable for a child to leave, where there are insurmountable obstacles to family life with a partner outside of the UK, or exceptional circumstances, that the family who would otherwise be expected to go, will satisfy the requirements under the rules or the exceptional circumstances policies to enter or remain on a 10-year route.

Applications in respect of children

Section 55 of the Borders, Citizenship and Immigration Act 2009 requires the Home Office to make arrangements for ensuring that immigration, asylum and nationality functions are discharged having regard to the need to safeguard and promote the welfare of children in the UK.

While the duty only applies to children in the UK, the spirit of the duty should be applied to children overseas. Adhering to the spirit of the duty recognises that every child matters alongside the limitation of what the Home Office can do for children overseas. This is because the Home Office cannot provide the same level of support of children overseas as if they were in the UK.

Due regard to the Section 55 duty must be given in the development or implementation of policy, processes and legislation, as well as its application in individual cases. The following paragraph sets out the arrangements which have been put in place in accordance with the Section 55 duty when the policy framework, as part of the immigration decision making process, is applied to children.

In accordance with the statutory guidance set out under Section 55 (3), Every Child Matters - Change for Children, the arrangements the Home Office has put in place in accordance with the Section 55 (1) duty are aimed at:

- ensuring operational staff who have face to face contact with children have received appropriate training for their role
- ensuring operational staff are alert to potential indicators of abuse or neglect, are alert to risks which abusers may pose to children and are ready and able to share relevant information with other public bodies with a responsibility towards children in order to safeguard and promote a child's welfare
- adhering to the spirit of the duty for children who are overseas, including following international or local agreements and making referrals
- ensuring operational staff carefully consider all the information and evidence provided to ascertain how a child will be affected by a decision, and this is addressed when assessing whether an applicant meets the requirements of the Immigration Rules or when considering an application on a discretionary basis outside the requirements of the Immigration Rules
- for all refusals, the decision notices demonstrate that all relevant information and evidence provided about the best interests of a child in the UK have been considered
- dealing with children's applications in a timely manner to minimise any uncertainty they may experience
- consulting children and ensuring their wishes or feelings are taken into account wherever practicable when decisions affecting them are made. If a child has a parent or guardian, they have responsibility for the child's concerns, and they will generally be acting in their best interests (although you should be alert to scenarios where they are not)

In accordance with the United Nations Convention on the Rights of the Child (UNCRC), the best interests of a child will be a primary consideration, although not the only consideration, when making decisions affecting children.

Considering the best interests of a child has procedural requirements and requires a balancing exercise that will vary depending on the case. This is about weighing up the evidence to determine whether additional considerations outweigh what you have firstly identified as the child's best interests. A fair balance must be struck, and the balance marginally tip one way. You must carefully consider all the information

and evidence provided to ascertain what the child's circumstances are. You must carefully assess the quality of any evidence provided. For example, original documentary evidence from official or independent sources must be given more weight in the decision-making process than unsubstantiated statements about a child's best interests

For all refusals, the decision notice must demonstrate that all relevant information and evidence provided, and legal obligations have been considered.

For more information, see:

- Every Child Matters – Change for Children
- United Nations Convention on the Rights of the Child
- Victims of human trafficking – guidance for frontline staff (where appropriate)
- Safeguarding children: detailed information

For more information on how to consider the best interests of a child in accordance with the family Immigration Rules, see:

- EX.1. Exceptions to certain eligibility requirements being met by a partner or parent in the UK
- The best interests of a relevant child

Transitional arrangements

Those who applied before, or were granted entry clearance, limited leave or discretionary leave as a family member prior to, 9 July 2012 are subject to transitional arrangements. Generally, they can continue their route to settlement under the Immigration Rules (or discretionary leave policy) in force on 8 July 2012.

See Transitional provisions (internal link).

The transitional provisions do not apply to the partner of a Relevant points-based system (PBS) Migrant who applies for leave to remain on the basis of family life as a partner on or after 6 April 2014. Where a PBS Migrant has settled (been granted indefinite leave to remain) under the long residence provisions in Part 7 paragraph 276A of the Immigration Rules, their partner must apply for leave to remain under Appendix FM and complete a relevant route to settlement under Appendix FM. However, where a PBS migrant settles in their relevant PBS route, their partner can apply instead for settlement as a PBS dependant.

Generally, partners of a British citizen or settled person who is a full-time member of HM Forces will apply under Part 8 under transitional arrangements or under Appendix Armed Forces rather than under Appendix FM.

Since 9 July 2012, further relevant Statements of Changes have been laid, to reflect the Supreme Court judgments in Alvi and MM (Lebanon) and to make corrections and clarifications to the rules.

These statements and the dates they came into force are:

- Cm8423 (20 July 2012)
- HC565 (6 September 2012)
- HC760 (13 December 2012)
- HC820 (13 December 2012)
- HC1038 (6 April 2013)
- HC244 (10 June 2013)
- HC628 (1 October 2013)
- HC803 (1 December 2013)
- HC1138 (6 April 2014)
- HC198 (1 July 2014)
- HC532 (28 July 2014)
- HC693 (6 November 2014)
- HC1025 (6 April 2015)
- HC297 (3 August 2015)
- HC535 (19 November 2015)
- HC877 (6 April 2016)
- HC667 (24 November 2016)
- HC1078 (6 April 2017)
- HC290 (10 August 2017)
- HC309 (11 January 2018)
- HC895 (6 April 2018)
- HC1154 (6 July 2018)
- HC1534 (5 November 2018)
- HC1779 (11 December 2018)
- HC1849 (20 December 2018)
- HC1919 (7 March 2019)
- HC 2099 (1 April 2019)
- HC2631 (9 September 2019)
- HC170 (24 October 2019)
- HC56 (30 January 2020)
- HC120 (12 March 2020)
- HC707 (10 September 2020)
- HC813 (22 October 2020)
- HC1043 (10 December 2020)
- CP361 (31 December 2020)
- HC1248 (4 March 2021)
- HC617 (10 September 2021)
- CP542 (11 October 2021)
- HC803 (1 November 2021)
- HC913 (14 December 2021)
- HC1019 (24 January 2022)
- CP632 (17 February 2022)
- HC1118 (15 March 2022)
- HC1220 (29 March 2022)
- HC17 (11 May 2022)
- HC 246 (7 December 2023)

- HC 590 (14 March 2024)
- HC 217 (10 September 2024)
- HC 733 (12 March 2025)
- HC 1298 (4 September 2025)
- HC 1491 (9 December 2025)

Family of UK residents with limited leave to enter or remain under Appendix EU (the EU Settlement Scheme) and Appendix ECAA (the European Communities Association Agreement)

From 31 December 2020, in line with changes made in HC813 and the end of the transition period following the UK's exit from the European Union, the following persons will be able to sponsor certain family members to join them in the UK:

- a European Economic Area (EEA) or Swiss national with limited leave under Appendix EU (the EU Settlement Scheme) in accordance with paragraph GEN 1.3.(d), will be able to sponsor a partner, child or adult dependent relative under Appendix FM
- a person in the UK with limited leave as a worker or business person under Appendix ECAA Extension of Stay (or under legacy arrangements in respect of the ECAA) in accordance with paragraph GEN 1.3.(e), will be able to sponsor a partner or child under Appendix FM

Family of a stateless person

Stateless persons with permission in the UK under Appendix Statelessness may sponsor a partner or child on that route provided they formed part of the family unit before they were granted permission as a stateless person in the UK. If they formed their family after they were granted permission to stay (as a stateless person), they must sponsor their dependants under Appendix FM.

Irish citizens

Irish citizens are generally considered to be settled for the purposes of the Immigration Rules and can bring family members to the UK on the same basis as a British citizen under these routes.

Paragraphs 5 C to E of the introduction to the Immigration Rules now clarify that unless expressly indicated, the rules do not apply to an Irish Citizen as they do not require leave to enter or remain as a result of section 3ZA of the Immigration Act 1971.

Partner of an employee of the UK Government, a Northern Ireland department, the Scottish Administration or the Welsh Government, or a permanent member of the British Council

Under Appendix FM, the partner of an employee of the UK Government, a Northern Ireland department, the Scottish Administration or the Welsh Government, or a permanent member of the British Council on an overseas tour of duty can complete their probationary period overseas after they have arrived in the UK and commenced their leave to enter or once they have been granted leave to remain in the UK, subject to providing the specified evidence set out in paragraph 26A of Appendix FM-SE.

The partner of such a Crown servant serving overseas must return to the UK before the expiry of their leave and apply for further leave to remain. An application for further leave to remain cannot be made from overseas. There is no requirement for the Crown servant to return to the UK with their partner to make this application for further leave to remain. Following a grant of further leave to remain the Crown servant partner can return overseas.

If the sponsor is still in Crown service overseas when their partner has completed their qualifying period for settlement as a partner under Appendix FM, the partner must return to the UK to apply for indefinite leave to remain.

Specified evidence

Appendix FM must be read together with Appendix FM-SE, which sets out the specified evidence which must be submitted with an application for entry clearance or limited leave to remain as a partner or parent. An applicant should provide evidence relating to the financial requirement, English language requirement, evidence of the applicant living overseas with a Crown Servant, and of Marriage or Civil Partnerships as this is specified within Appendix FM-SE.

There may be instances where evidence cannot be provided by an applicant. As per Appendix FM-SE D. (e), where you are satisfied that there is a valid reason why a specified document cannot be supplied, for example because it is not issued in a particular country or has been permanently lost, you may exercise discretion not to apply the requirement for the document / documents or to request alternative or additional information or document / documents be submitted by the applicant.

Not all evidence in family or private life applications is specified under Appendix FM-SE due to the variety of evidence that may be provided, for example to demonstrate a genuine and subsisting relationship to a child, or an unmarried couple having been in a relationship similar to marriage or civil partnership for at least 2 years. There will be cases where providing evidence is more difficult due to the circumstances of the applicant and sponsor.

For example:

- the applicant or their sponsor may have needed to leave their home under duress and without the time or capacity to collect documents
- there may not have been a functioning administrative authority to issue documents such as birth and marriage certificates, passports or courts who can provide copies of adoption orders
- the applicant may also be reluctant to approach authorities, which may have prevented what would otherwise be a standard administrative process, for example the registration of marriage or the birth of a child
- refugees or those with humanitarian protection may not have any evidence, for example, of the existence of a same-sex relationship, where there may be no avenue to legally marry or have a civil partnership or having photographs in the country from which the sponsor has fled may have put them in danger
- documents may have been lost or destroyed in the conflict or on the journey to safety

Where original documents or evidence have not been submitted with an application, you should consider contacting the applicant to elicit further evidence. The onus is on the applicant to provide a reasonable alternative or a reasonable explanation for their absence, including any attempts to obtain them - see UKVI Identity Standards (internal link). Submitting false documents or evidence, whatever the motives for doing so, may lead to refusal – see section on suitability.

English translations must be provided otherwise you will be unable to verify these documents and accept them as supporting evidence.

Applicants can submit evidence other than what is specifically requested or required. All submitted evidence must be taken into account, however it is the responsibility of decision makers to evaluate the evidence in the round to determine whether the requirements of the rules have been met.

In addition to individual accounts submitted by the applicant, Country policy and information (internal link) will give some insight into challenges that individuals may face in obtaining documents or providing credible documentation and / or evidence, particularly where the sponsor fled the country of origin and has subsequently been granted protection status in the UK. Country Policy and Information also provides insight into the reasons why a couple may not have been able to live together in certain countries and the challenges around obtaining evidence of a relationship.

DNA testing

DNA evidence can show whether a person is biologically linked to another person and the extent of that relationship – see UKVI Identity Standards (internal link). However, you must not require DNA evidence. Applicants can choose to volunteer DNA evidence from an accredited testing laboratory either proactively or in response to an invitation to submit further relevant evidence, which may include DNA evidence. Where applicants choose not to volunteer DNA evidence, no negative inferences can be drawn from this. Where DNA evidence has been submitted, you should consult the DNA policy guidance (internal link).

Related content

Contents

Family life routes

This section gives you an introduction to the family life routes.

Introduction

Appendix FM provides 2 routes to settlement on the basis of family life as a partner or parent. These are a 5-year route and a 10-year route where:

- the 5-year route is for a partner, parent or child who meets all the suitability and eligibility requirements of the Immigration Rules at every stage
- the 10-year route is for:
  - a partner, parent or child who meets all family life suitability and certain eligibility requirements and EX.1. applies under Appendix FM
  - those who have exceptional circumstances

Approach

Each person must receive consideration of their family and individual circumstances, taking in to account all matters raised on a case-by-case basis.

Where an applicant has made an application for leave to remain as a partner or parent but has no qualifying sponsor, they are unable to meet the eligibility requirements of the Partner or Parent route, and should first be considered under Appendix Private Life, where it is possible for them to meet the eligibility requirements. See Private Life guidance.

A qualifying sponsor for the purpose of leave to remain as a Partner is a person over the age of 18 who is:

- a British Citizen in the UK
- present and settled in the UK
- in the UK with protection status:
  - including those granted 30 months leave after an asylum application made on or after 2 March 2026
- in the UK with limited leave under Appendix EU, in accordance with paragraph GEN.1.3.(d)
- in the UK with limited leave as a worker or business person under Appendix ECAA Extension of Stay, in accordance with paragraph GEN.1.3.(e)
- in the UK with permission as a Stateless person

A qualifying sponsor for the purpose of leave to remain as a Parent is a person under the age of 18 years at the date of application, or where the child has turned 18 years of age since the applicant was first granted entry clearance or leave to remain as a parent under this Appendix, must not have formed an independent family unit or be leading an independent life who:

- is a British Citizen

- is settled in the UK
- is in the UK with limited leave under Appendix EU, in accordance with paragraph GEN.1.3.(d)
- has lived in the UK continuously for at least the 7 years immediately preceding the date of application and paragraph EX.1. applies

In all family applications, you should check whether any children included in the application have been resident in the UK for 7 years and if so, consider their claim first. See the Considering applications from children on the basis of 7 years residency in the UK section of the Private Life guidance.

The remaining family members will be considered under Appendix FM if their basis for remaining in the UK is based on their family life following the steps set out below.

First, you must consider if the applicant meets the general, suitability and eligibility requirements of the relevant Immigration Rule; without consideration of exceptional circumstances under paragraph GEN.3.1 and GEN.3.2. of Appendix FM. Where those core Immigration Rules are met, leave under the relevant rules should be granted on a 5-year route.

Second, if an applicant does not otherwise meet the relevant general, suitability and eligibility requirements of the family Immigration Rules, you must move on to consider under paragraph GEN.3.1. to GEN.3.3. of Appendix FM, whether, in the light of all the information and evidence provided by the applicant, there are exceptional circumstances which could or would render refusal a breach of European Convention on Human Rights (ECHR) Article 8 because it 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 the information provided by the applicant would be affected.

If there are such exceptional circumstances, and any other relevant requirements are met, leave to remain should be granted on a 10-year route to settlement (as a partner, parent or child under Appendix FM) except where a dependent child qualifies for a grant under the private life provisions as above. If not, the application should be refused.

The Immigration Rules are designed to provide the relevant requirements for the vast majority of those wishing to enter or remain in the UK. Where the Immigration Rules are not met, it will normally be justifiable to refuse an application or claim. However, you have the ability to exercise discretion within your consideration and the Secretary of State has the power to grant leave on a discretionary basis, under or outside the Immigration Rules which flows from residual discretion under the Immigration Act 1971, where it could or would be unjustifiable to expect the person and their family to leave the UK.

Where Appendix FM cannot be met, and there is family affected by the decision, you should consider granting permission to stay based on exceptional circumstances with regard to GEN.3.2. rather than under private life provisions or outside of the Immigration Rules where possible. It is preferable to grant permission to stay under the family Immigration Rules to those who seek to remain on the basis of family life

rather than under private life or outside of the Immigration Rules as this is their primary reason for stay.

Discretion should be used sparingly where there are factors that warrant a grant of leave despite the requirements of the Immigration Rules and exceptional circumstances policy having not been met.

General provisions

Paragraphs GEN.1.1. to GEN.3.3. of Appendix FM of the Immigration Rules set out general provisions. You must refer to the relevant general provisions when deciding an application or claim for leave to remain on the basis of family or private life.

Related content
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Suitability requirements

This section tells you about the suitability requirements of the family rules.

Suitability

In considering **all** applications on the basis of a person's family life as a partner or parent, you must consider whether the suitability requirements under Part Suitability of the Immigration rules are met.

Guidance on considering individual requirements of Part Suitability can be found here:

- Grounds for refusal (internal link)
- Grounds for refusal (external link)

Addressing suitability

The provisions in Part Suitability are either mandatory (must) or discretionary (may). However, consideration must be given to the UK obligations under the European Convention on Human Rights (ECHR), and where refusal would breach Article 8 of the ECHR, appropriate leave should be granted even where mandatory provisions are failed.

Where an applicant 'may' be refused if they fail to meet a suitability requirement, you should look at the nature of the suitability issues being considered in the context of the application as a whole, and decide whether those issues are sufficiently serious to refuse on the basis of suitability (bearing in mind that anything which comes within these criteria 'may' be refused) or whether there are compelling reasons to decide that the applicant meets the suitability criteria. This will be a case-specific consideration. The guidance for the relevant section of Part Suitability will provide further details on making this assessment.

Where an applicant 'must' be refused, or where a discretionary refusal is being imposed, consideration should be given to whether a refusal would be incompatible with the UK obligations under Article 8 of the European Convention on Human Rights (ECHR) (See 'Exceptional circumstances' and 'unjustifiably harsh consequences').

However, where an application on the basis of Family Life falls for refusal under SUI 2.1., SUI 2.3., SUI 3.1., SUI 4.1. or SUI.5.1. of Part Suitability the application **must be refused** under Appendix FM as D-ECP.1.2A., D-LTRP.1.2A., D-ECPT.1.2A. or D-LTRPT.1.2A. will apply.

For applicants failing SUI 2.1., SUI 2.3., SUI 3.1., SUI 4.1. or SUI 5.1. consideration should be given to whether they may meet the threshold for deportation. You must refer the case to the Foreign National Offender (FNO) Returns Command for them to consider whether to pursue deportation. You should also refer the case to FNO Returns Command where there is a live deportation order.

In circumstances where there is an established Article 8 barrier to deportation and FNO Returns Command have confirmed they do not have a continued interest in pursuing deportation because of this barrier, where the applicant fails SUI 3.1. or SUI.5.1. or Part Suitability a grant of leave outside the rules may be considered for up to 30 months on Article 8 grounds. Whilst the Secretary of State retains discretion as to whether to grant and the conditions of such grant, it will normally be appropriate to include conditions such as permission to work, permission to study but no recourse to public funds.

For applicants falling for refusal under SUI 2.1., SUI 2.3. or SUI 4.1. of Part Suitability where refusal would be incompatible with the UK's obligations under the ECHR, consideration should be given to Restricted leave (internal link). Potential restricted leave referrals must be emailed to Special Cases General Enquiries and to Criminality Policy.

Safeguarding ground paragraph SUI 6.1.

The purpose of paragraph SUI 6.1. of Part Suitability is to enable Entry Clearance Officers to make decisions consistent with the need to safeguard children where entry clearance applications under Appendix FM involving children raise child welfare or child protection issues. It provides a ground for refusing entry clearance on the basis of suitability where the applicant is a child and the applicant's parent, or parent's partner is regarded as posing a risk to the applicant. That person may be considered to pose a risk to the applicant if, for example, they:

- have a conviction as an adult, whether in the UK or overseas, for an offence against a child
- are a registered sex offender and have failed to comply with any notification requirements
- are required to comply with a sexual risk order made under the Anti-Social Behaviour, Crime and Policing Act 2014 and have failed to do so

In the specific instances above there is a presumption that such a risk exists although the sponsor may rebut this. This list is not exhaustive, and there may be other indicators of risk which should be assessed on a case by case basis.

While offenders and other individuals subject to sex offender notification requirements are not prevented from having a private or family life, it will normally be the case that a change to their domestic circumstances will have to be notified to the police and non-compliance with this is itself a basis for presuming that a risk exists.

A Police National Computer (PNC) check is not mandatory in every case where the applicant is a child but can be requested on a discretionary basis in respect of the child's parent or parent's partner to establish whether they have a conviction that may cause safeguarding concerns for the child. This is a child protection measure.

A PNC check may be particularly relevant where the person's links with the child are not long-standing, or involve promises of long-term care, or a stated intention to adopt, particularly if these appear vague and are not substantively supported.

Factors in favour of refusal under paragraph SUI 6.1.

Refusal under paragraph SUI 6.1. should be considered where the child applicant's parent or parent's partner has a conviction as an adult, whether in the UK or overseas, for an offence against a child. This is directed at instances where the child applicant's parent or parent's partner has been convicted of child neglect or child cruelty, or of assault or other form of violence against a child. A conviction for these offences will not have led to the offender being placed on the sex offender register.

Refusal under paragraph SUI 6.1. should be considered where a PNC check reveals that the child applicant's parent or parent's partner is a registered sex offender. The effect of being a registered sex offender is that the person must notify the police with respect to the following:

- all foreign travel
- weekly, where they are registered as having 'no fixed abode'
- any change of home address
- when they are living in a household with a child under the age of 18
- details of bank accounts and credit cards held and of passports and other identity documents held

If the information obtained from a PNC check is that the child applicant's parent or parent's partner has failed to notify the police of any of the above, the application can be refused on the grounds that the sponsor has failed to comply with notification requirements to which they are subject and therefore the suitability requirements are not met.

There may be instances where the information obtained from a PNC check is inconclusive, for instance, because of the absence of any record of contact between the police and the person subject to notification requirements. In these cases, where a known offender is involved, up-to-date information must be sought from the local police where the individual lives. If the person has not been in touch with the police for a significant period, the police may wish to visit the home itself, as part of their role in risk managing that offender.

If the person provides correspondence from the police indicating that they are aware of the child's application and / or the person's travel overseas, a check must be made as to its genuineness.

Refusal under paragraph SUI 6.1. should be considered where the child applicant's parent or parent's partner is considered to pose a risk where they are required to comply with a sexual risk order made under the Anti-Social Behaviour, Crime and Policing Act 2014 and have failed to do so.

A sexual risk order can be made in relation to any individual who poses a risk of sexual harm in the UK or abroad and does not require that they have a conviction for a relevant offence. The making of the order requires only that the person has committed an act of a sexual nature as a result of which such an order is necessary to protect the public. A sexual risk order may be made, for example, where there is

evidence of attempts to ‘groom’ a child or to engage in inappropriate internet conversations with a child.

The order prohibits the person subject to it from doing anything prescribed in the order and can include a prohibition on foreign travel. If a sexual risk order has been made in relation to a person, this will be recorded on PNC. If this is the case, then a check should be made with the local police to confirm that the person is fully complying with the order and that the child’s application does not amount to a breach of the order or require other action from the police.
Other risk factors may be present which prompt further investigation; advice should be sought from senior caseworkers if you are unsure of a potential safeguarding issue.

Where an application is refused on the basis of paragraph SUI 6.1., the refusal letter should inform the child applicant and their parent or parent’s partner of the broad nature of the information underlying the refusal but leave it to the offender to inform those affected by the decision of the relevant details.

Factors against refusal under paragraph SUI 6.1.

Where the circumstances set out below apply, it can be presumed that a risk to the child exists.

- have a conviction as an adult, whether in the UK or overseas, for an offence against a child
- are a registered sex offender and have failed to comply with any notification requirements
- are required to comply with a sexual risk order made under the Anti-Social Behaviour, Crime and Policing Act 2014 and have failed to do so

The application should be refused unless additional information is available to rebut that presumption. Such information might be:

- strong evidence that the relationships involved have endured for a long time, with the knowledge of the police or offender management authorities, and no harm has occurred
- evidence from the police or offender management authorities that there is little or no risk involved in these particular circumstances, or any risk that is present can be managed
- evidence that the offending behaviour that led to the person being placed on the sex offender register was different in a significant way to the circumstances of the application

A person on the sex offender register may want to have it taken into account that a long period has elapsed without any offending or other harmful behaviour.

These factors must be considered, and if necessary, the views of the police or offender management authorities sought, and consideration given as to whether a refusal decision will be proportionate when all the available information is taken into account.

It is also important to note that cases will vary. In some cases, there may be no pre-existing or long-term relationship with the child, for example where the person is forming a new family with a partner from overseas and that partner has a child from a previous relationship. In other cases, the person who is being checked may be able to demonstrate a long history of safe parental care for the child and of living together, with the person's partner, as a family unit.

It is important to note that sensitive personal information is involved. The PNC check is conducted on the child applicant's parent or parent's partner, not the applicant. It is likely that the PNC record accessed will be that of a British citizen or a person settled in the UK. In addition, it is important to note that the applicant is the child, not the child's parent or parent's partner even though the check has been on them. The application process for the child makes clear to them as applicant that this check may take place in respect of their parent or their parent's partner and that their application may be refused as a result.

The sponsorship declaration on the application form indicates that that, where it is relevant to do so, information from checks on the sponsor or their partner may be communicated to the applicant. This will not be done by UKVI staff but, where relevant, will be done by the police as part of their role in such cases.

If the applicant falls for refusal on the basis of suitability under S-EC, the application will be refused.

Related content
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Family life as a partner

This section tells you how to consider applications under the Immigration Rules based on family life as a partner of a person who is one of the following:

- a British citizen
- present and settled in the UK
- someone with protection status in the UK:
  - including those granted 30 months leave after an asylum application made on or after 2 March 2026
- a European Economic Area (EEA) or Swiss citizen in the UK with limited leave under Appendix EU (also known as pre-settled status under the EU Settlement Scheme) in accordance with paragraph GEN 1.3.(d) - this means that their limited leave was granted on the basis of their residence in the UK before the end of the transition period at 11pm on 31 December 2020 and that they were an EEA or Swiss national by then
- a worker or business person in the UK with limited leave under Appendix ECAA Extension of Stay (or under legacy arrangements in respect of the European Communities Association Agreement (ECAA)) in accordance with paragraph GEN 1.3.(e)
- a person in the UK with permission and recognised as stateless and the applicant cannot seek entry clearance or permission as their family member under Appendix Statelessness

Under GEN.1.2. of the Immigration Rules Appendix FM, a ‘partner’ is defined as one of the following:

(i) spouse; or
(ii) civil partner; or
(iii) fiancé(e) or proposed civil partner; or
(iv) unmarried partner, where the couple have been in a relationship similar to marriage or civil partnership for at least 2 years before the date of application.

A valid marriage or civil partnership must be evidenced as specified in Appendix FM-SE paragraphs 22 to 26 with a valid certificate. When assessing whether a marriage or civil partnership is valid, you should refer to the Partners, divorce and dissolution guidance (internal link).

The 2-year period for a relationship between a couple who are not married or in a civil partnership must have been completed prior to the date of application. The 2-year period does not require evidence of cohabitation for the period and will take account of instances where, for example, the couple are currently living apart for work reasons in order to meet the financial requirements of the rules. The essential point is that the relationship has been genuine and subsisting for the duration of the 2-year period and continues to be at the date of application.

Guidance on the type of evidence required to demonstrate a genuine and subsisting relationship can be found in the supporting document tiers section and in the Relationship with a Partner guidance (internal link).

Where the definition of partner is not met because a couple who are in a genuine and subsisting relationship have been together for less than 2 years, the requirements of Appendix FM cannot be satisfied other than on the basis of exceptional circumstances.

Related content
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Family life as a partner – eligibility

The eligibility requirements for entry clearance as a partner are set out in paragraphs E-ECP.2.1. to E-ECP.4.2. of Appendix FM.

The eligibility requirements for leave to remain as a partner are set out in paragraphs E-LTRP.1.2. to E-LTRP.4.2. of Appendix FM.

Eligibility informs who qualifies for leave as a partner on a 5 or 10-year route to settlement

The route to settlement (5-year or 10-year) an applicant can qualify for, depends on whether all, some or no eligibility requirements are met.

All eligibility requirements must be met for a partner to qualify for entry clearance or leave to remain on the 5-year route.

Otherwise to qualify for entry clearance or leave to remain on a 10-year route:

- an applicant must meet all eligibility requirements and rely on other sources of income to meet the financial eligibility requirement because there are exceptional circumstances in accordance with GEN.3.1. of Appendix FM
- an applicant must meet some and qualify for an exception to the other requirements because EX.1. (a) or (b) of Appendix FM applies
- an applicant meets some or no eligibility requirements but there are exceptional circumstances in accordance with paragraph GEN.3.2. of Appendix FM

Eligibility that must be met by a partner on a 5 or 10-year route (without consideration of exceptional circumstances under GEN.3.1. or GEN.3.2.)

All of the following eligibility requirements must be met.

Relationship

This section applies to entry clearance and leave to remain applications.

General

To qualify for entry clearance or leave to remain as a partner the applicant must meet the relationship requirements in Appendix FM – Family life as a partner. The relevant paragraphs are:

- entry clearance: E-ECP.2.1. to E-ECP.2.10.
- leave to remain: E-LTRP.1.2. to E-LTRP.1.12.

Present and settled

When considering paragraph E-ECP.2.1.(b) and paragraph E-LTRP.1.2.(b), you must be satisfied that the applicant's partner is present and settled in the UK as set out in the definition of 'present and settled' or 'present and settled in the UK' Under paragraph 6 of the Immigration Rules.

Minimum age

When considering paragraphs E-ECP.2.2., E-ECP.2.3., E-LTRP.1.3. and E-LTRP.1.4, you must be satisfied that the applicant and their partner are aged 18 or over at the date of application.

Prohibited degree of relationship

When considering paragraph E-ECP.2.4. and paragraph E-LTRP.1.5., you must be satisfied that the applicant and their partner are not within the prohibited degrees of relationship. This definition is contained in paragraph 6 of the Immigration Rules. See Partner, divorce and dissolution guidance (internal link).

Couple to have met in person

When considering paragraph E-ECP.2.5. and paragraph E-LTRP.1.6., you must be satisfied that the applicant and their partner have met in person.

'To have met' has been interpreted by the Tribunal as 'to have made the acquaintance of' which means that, provided the parties have made the acquaintance of each other, that acquaintance need not be in the context of marriage or civil partnership. This means for example that if the parties had been childhood friends, it could be acceptable, although the meeting of 2 infants would not. A mutual sighting or mere coming face-to-face followed by telephone or written contact would not suffice. The Tribunal has decided that 'met' implies a face-to-face meeting itself resulting in the making of mutual acquaintance.

Where you are not satisfied that the couple have met in person, the application must be refused.

All aspects of the case must be considered as well as the requirement to have met in person. If there are other grounds for refusal, these should also be included in the refusal notice, although not having met in person can be the sole ground for refusal.

Genuine and subsisting relationship

When considering paragraph E-ECP.2.6. and paragraph E-LTRP.1.7., you must be satisfied that the relationship between the applicant and their partner is genuine and subsisting.

Valid marriage or civil partnership

When assessing whether an applicant claiming to be married or in a civil partnership meets the requirements of paragraph E-ECP.2.7. and paragraph E-LTRP.1.8., you must be satisfied that the applicant and partner have a valid marriage or civil partnership (internal link) with evidence as specified in paragraphs 22 to 26 of Appendix FM-SE. You should note that there may be circumstances where applicants can face difficulties in evidencing a marriage or civil partnership, for example where the sponsor has protection status in the UK and may not have ready access to an official certificate. Particular care should be taken in these cases.

As per Appendix FM-SE D. (e), where you are satisfied that there is a valid reason why a specified document cannot be supplied, for example because it is not issued in a particular country or has been permanently lost, you may exercise discretion not to apply the requirement for the document / documents. Additionally, where evidence is lacking or inconclusive, you should consider contacting the applicant to elicit further evidence. Where the sponsor has protection status in the UK, you should cross-reference the family details provided in their protection application with the information now presented. All cases should be considered on a case by case basis, and the relevant country information may be useful in assessing any explanation provided.

Fiancé, fiancée or proposed civil partner seeking entry

When considering paragraph E-ECP.2.8., you must be satisfied that an applicant for entry clearance as a fiancé, fiancée or proposed civil partner is coming to the UK to enable the marriage or civil partnership to take place in the UK.

Previous relationship has broken down permanently

When considering paragraph E-ECP.2.9.(i) and paragraph E-LTRP.1.9., you must be satisfied that any previous relationship of the applicant or their partner has broken down permanently, unless it is a marriage or civil partnership which falls within paragraph 278(i) of the rules.

When considering paragraph E-ECP.2.9.(ii), you must be satisfied that neither the applicant nor their partner is married to, or in a civil partnership with, another person at the date of an application for entry clearance as a fiancé, fiancée or proposed civil partner under Appendix FM.

Where the applicant and/or their partner has previously been married or in a civil partnership, the applicant must provide evidence as specified in paragraphs 23 and 25 to 26 of Appendix FM-SE that the previous marriage or civil partnership has ended.

Where the marriage or civil partnership of the applicant or their sponsor to a previous partner has not been legally dissolved, the applicant may still be able to qualify under Appendix FM as an unmarried partner or same sex partner, provided that they meet the criteria set out in paragraph GEN.1.2. and they provide evidence that the new

relationship is genuine and subsisting and that the previous relationship has broken down permanently.

Intention to live together permanently in the UK

When considering paragraph E-ECP.2.10. and paragraph E-LTRP.1.10., you must be satisfied that the applicant and their partner intend to live together permanently in the UK within the definition of 'intention to live together permanently with the other' or 'intend to live together permanently' under paragraph 6 of the Immigration Rules.

In applications for further limited leave to remain in the UK as a partner, where there have been limited periods of time spent outside the UK, this must be for good reasons and the reasons must be consistent with the intention to live together permanently in the UK. Good reasons could include time spent overseas in connection with the applicant's or their partner's work, holidays, training or study.

If the applicant, their partner or both have spent the majority of the period overseas, there may be reason to doubt that the couple intend to live together permanently in the UK. Each case must be judged on its merits, taking into account reasons for travel, length of absence and whether the applicant and partner travelled and lived together during the time spent outside the UK. These factors will need to be considered against the requirements of the rules.

Where an application is made under Appendix FM and the sponsor is an employee of the UK Government, a Northern Ireland department, the Scottish Administration or the Welsh Government, or a permanent member of the British Council on a tour of duty outside the UK, the words 'in the UK' in this definition do not apply.

Under Appendix FM, the partner of an employee of the UK Government, a Northern Ireland department, the Scottish Administration or the Welsh Government, or a permanent member of the British Council on an overseas tour of duty can serve their probationary period overseas once they have been to the UK to trigger the start of that period, subject to providing the specified evidence set out in paragraph 26A of Appendix FM-SE. Therefore, if the applicant is the partner of such a person and has been living with them whilst they have been posted overseas, it will normally be accepted that this is consistent with the intention to live together permanently in the UK, subject to provision of the specified evidence. The applicant must, however, prior to their leave expiring, return to the UK to make an application for further limited leave to remain of 30 months or for indefinite leave to remain, as appropriate.

Status of sponsor

An applicant's partner must be:

- a British citizen in the UK
- present and settled in the UK
- a person with protection status in the UK (including those granted 30 months leave after an asylum claim made on or after 2 March 2026)

- a European Economic Area (EEA) or Swiss national in the UK with limited leave under Appendix EU, granted on the basis of their residence in the UK before the end of the transition period at 11pm on 31 December 2020 and that they were an EEA or Swiss national by then, in accordance with paragraph GEN 1.3.(d)
- in the UK with limited leave as a worker or business person under Appendix European Communities Association Agreement (ECAA) Extension of Stay in accordance with paragraph GEN.1.3.(e)
- in the UK with permission as a person recognised as being stateless and the applicant cannot seek entry clearance or permission as their family member under Appendix Statelessness

Adults and accompanied children who claimed asylum after 2 March 2026 who are considered eligible for refugee or humanitarian protection status will be granted 30 months permission to stay unless transitional arrangements apply. Unaccompanied asylum-seeking children and those who claimed asylum before 2 March 2026 will receive 5 years permission to stay, if eligible for protection.

Eligible sponsors also include the individuals who came to the UK on resettlement schemes which confer protection status such as:

- Gateway Protection Programme
- Mandate Refugee Programme
- Syrian Vulnerable Persons Resettlement (VPR) scheme
- Community Sponsorship Scheme
- UK Resettlement Scheme (UKRS)
- Afghan Citizens Resettlement Scheme: Pathway 2 (ACRS)

Resettlement scheme sponsors are unaffected by the change granting 30 months permission to stay to protection status holders who claimed asylum after 2 March 2026.

Immigration status requirements

To meet the eligibility requirements for leave to remain, the applicant must not be in the UK:

- as a visitor
- with valid leave granted for a period of 6 months or less, unless that leave is as a fiancé, fiancée or a proposed civil partner, or was granted pending the outcome of family court or divorce proceedings

EX.1. does not apply when an applicant is in the UK with such leave.

Where the applicant is in the UK visiting friends or on holiday on a standard visit visa, it means that they have undertaken to leave the UK before their visa expires. In all cases, visa or non-visa nationals have satisfied the entry clearance officer or immigration officer that they will do so, or have used eGates to enter the UK on presumption of compliance with the conditions of their stay. Those wishing to come

to the UK to settle here as a partner or parent should apply for entry clearance under the family Immigration Rules. In view of that, a visitor cannot meet the requirements of the family Immigration Rules to remain in the UK.

Where an application is made by a visitor to remain, it is only where there are exceptional circumstances, that a person here as a visitor can remain on the basis of their family life on a 10-year route.

The applicant must not be in the UK:

- on immigration bail, unless the Secretary of State is satisfied that the applicant arrived in the UK more than 6 months prior to the date of application and paragraph EX.1. applies
- in breach of immigration laws (except that, where the Exceptions for overstayers section of Part Suitability applies, any current period of overstaying will be disregarded), unless paragraph EX.1. applies

For further guidance on applications from overstayers and Exceptions for overstayers section of Part Suitability of the Immigration Rules, see:

- Applications from overstayers (internal)
- Applications from overstayers (external)

Revocation of the sponsor's status

You must consider any information submitted in support of the Appendix FM application against any information provided by the sponsor as part of any previous applications. If you identify evidence that suggests the sponsor's previous grant of status was obtained by deception or misrepresentation this will lead to a review of their status.

Where the sponsor has protection status in the UK, you should also consider whether there is evidence the sponsor has re-availed themself of the protection of their country of origin. Applicants may not always know the full details of the sponsor's protection claim due to, for example, prolonged separation or security reasons. You **must not** disclose to the applicant why their sponsor has sought protection in the first place.

See:

- Revocation of Indefinite Leave (internal link)
- Revocation of protection status (internal link)

Eligibility that must be met by a partner to start or stay on a 5-year route

All of the following eligibility requirements must also be met to qualify for entry clearance or leave to remain on a 5-year route.

Financial requirement

To qualify for leave as a partner on the 5-year route to settlement the applicant must meet the minimum income requirement in Appendix FM - Family Life as a Partner. For guidance on the financial requirement, see Family Migration Appendix FM and Appendix HM Armed Forces Financial Requirement (internal link).

A partner, who is exempt from the minimum income requirement under the financial requirement in Appendix FM (because their partner is in receipt of a specified benefit or allowance), must instead demonstrate that they are able to maintain themselves, the applicant and any dependants 'adequately' without access to public funds. Specified evidence must be provided as set out in Appendix FM-SE. See Appendix FM and Adult Dependent Relative - maintenance and accommodation guidance (previously Appendix 1.7A guidance) (internal link).

Adequate accommodation

To qualify for leave as a partner on the 5-year route to settlement the applicant must meet the accommodation requirement in Appendix FM - Family Life as a partner or parent.

The applicant must provide evidence that there will be adequate accommodation, without access to public funds, for the family (including other family members who are not included in the application but who live in the same household), which the family own or occupy exclusively.

Accommodation will not be regarded as adequate if:

- it is, or will be, overcrowded
- it contravenes public health regulations

For further guidance on the accommodation requirement, see Family members - maintenance and accommodation (internal link).

Speaking English

To qualify for entry clearance or leave to remain as a partner on the 5-year route to settlement the applicant must meet the English language requirement in Appendix FM - Family life as a partner.

Under paragraphs E-ECP.4.1. to 4.2 and paragraphs E-LTRP.4.1. to 4.2. the applicant must provide evidence as specified in paragraphs 27 to 32D of Appendix FM-SE that the relevant English language requirement or exemption is met.

For further guidance on the English language requirement, including exemptions, see English language requirement family members (internal link).

An applicant for leave to remain who was exempt from the English language requirement needs to meet the requirement at paragraphs E-LTRP.4.1. to .4.2. when

they apply for further leave to remain in the UK on the 5-year route to settlement, unless they again qualify for an exemption, on the same or a different basis.

Supporting document tiers

The table below shows a non-exhaustive list of evidence that can be submitted by applicants to confirm their relationship with their spouse or partner is genuine. The listed evidence has been tiered to reflect the significance of the documents when making a decision, tier 1 being the most valued pieces of evidence and tier 3 the least.

Tier 1	Tier 2	Tier 3
Tenancy agreement	Electoral register confirmation	Greetings cards
Council tax bill	-	Older documents – anything more than 4 years before the application date
Utility bill	Documentation issued by a student finance body that shows a UK address	Message transcripts
Marriage certificate	Other dated, UK-addressed domestic bills, for example, veterinary bills or home services / repairs	Photographs
Joint bank statement	-	Shopping / meal receipts
DWP / HMRC letters to demonstrate family unit as claimed	-	Train tickets
Car finance agreement documents which evidences address as claimed	-	Flight tickets
Insurance documentation which evidences address as claimed	-	Wedding / engagement invitations
Medical letters and GP registration documentation	-	Letters of support from friends / relatives or religious leaders with British citizenship
Evidence of joint finances business ventures or commitments (such as tax returns, business contracts, investments)	-	Holiday booking confirmation

Decision to grant entry clearance or leave to remain as a partner on a 5 or 10-year route

Under paragraph D-ECP.1.1., if the applicant meets the requirements for entry clearance as a partner under the 5-year route, they should be granted entry clearance for an initial period of no more than 33 months (6-months as a fiancé, fiancée or proposed civil partner).

This period of 33 months (or 6-months as a fiancé, fiancée or proposed civil partner) is to be granted where the sponsoring partner is in the UK with protection status, unless the protection status was granted for 30 months (for those granted protection following an asylum application made on or after 2 March 2026). Applicants whose sponsor received a 30 month protection grant following an application made on or after 2 March 2026 will be granted permission for the same duration, with their permission ending on the same date as the sponsor's. See: Shorter or longer periods of permission.

A fiancé, fiancée or proposed civil partner should be advised that they will be eligible to apply for leave to remain in the UK as a partner once the marriage or civil partnership has taken place in the UK.

A spouse or civil partner can re-enter the UK following a honeymoon abroad during the remaining validity of their entry clearance as a fiancé, fiancée or proposed civil partner if they can satisfy the Immigration Officer, in the light of the change in their marital or civil partnership status (which they should evidence with a copy of the marriage or civil partnership certificate), of their intention, within the remaining validity of that entry clearance, to regularise their status in the UK as a spouse or civil partner.

Any period of entry clearance or limited leave as a fiancé, fiancée or proposed civil partner does not count towards the continuous period of leave as a partner required for settlement.

Where an applicant meets the requirements for leave to remain as a partner in the UK under paragraph R-LTRP.1.1.(a), (b) and (c) or (d), the applicant will be granted leave to remain as a partner for a period not exceeding 30 months under paragraph D-LTRP.1.1. or D-LTRP.1.2. of Appendix FM, on a 5 or 10-year route to settlement. Applicants whose sponsor received a 30 month protection grant following an application made on or after 2 March 2026 will be granted permission for the same duration, with their permission ending on the same date as the sponsor's. See: Shorter or longer periods of permission.

The applicant should be advised that, where eligible, they should make a valid application for further leave to remain as a partner no more than 28 days before their extant leave is due to expire, or no more than 28 days before they have completed 30 months in the UK with such leave.

Where a person submits an Appendix FM partner application up to 28 days before they have completed 30 months in the UK with leave to enter or remain as a partner

under Appendix FM, that person will be considered to have met the required continuous residence period of 30 months as a partner.

Where an applicant currently has extant leave to enter or remain as a partner under Appendix FM at the date of application (excluding a grant of limited leave to remain as a fiancé, fiancée or proposed civil partner), that period of extant leave, up to a maximum of 28 days, will be added to the period of leave to remain that they are being granted as a partner. An applicant with extant leave in this scenario will therefore be granted a period of leave to remain as a partner slightly in excess of 30 months. A person who applies more than 28 days before their leave is due to expire or they have completed the relevant qualifying period may not meet the requirement to have completed at least 60 or 120 months in the UK with relevant leave to remain in order to apply to settle and may instead need to apply for a further period of limited leave.

Where a partner is being granted entry clearance, any dependent child included in the application who requires leave, should be considered under paragraph EC-C.1.1. of Appendix FM. If the child meets the requirements of those rules, they should be granted leave under paragraph D-ECC.1.1. of the same duration.

Where a partner is being granted leave to remain, any dependent child included in the application who requires leave should be considered under paragraph R-LTRC of Appendix FM. If the child meets the requirements of those rules, they should be granted leave under paragraph D-LTRC.1.1. of the same duration as their parent who is being, or has been, granted leave to remain as a partner under Appendix FM, unless they qualify for a grant under the Private Life rules (see Approach section of this guidance above).

Access to public funds

In all cases where you are granting entry clearance or permission to stay as a fiancé, fiancée or proposed civil partner, you must grant with no access to public funds and a prohibition on work.

In all cases where you are granting entry clearance or permission to stay as a partner under paragraphs D-ECP.1.1., D-LTRP.1.1. on the 5-year route to settlement, you must grant with no access to public funds.

In all cases where you are granting entry clearance or permission to stay as a partner under paragraphs D-ECP.1.2., D-LTRP.1.2. on the 10-year route to settlement, you must consider whether to grant access to public funds.

You must grant access to public funds where the applicant has provided satisfactory evidence that:

- they are destitute or at risk of imminent destitution
- there are reasons relating to the welfare of a relevant child which outweigh any reasons for not allowing access
- they are facing exceptional financial circumstances relating to their income or expenditure

You may need to make further enquiries to establish whether the above criteria have been met.

When deciding whether to allow access to public funds, the best interests of a relevant child must be treated as a primary consideration.

A ‘relevant child’ means a person who both:

- is under the age of 18 years at the date of application; and
- it is clear from the information provided by the applicant, is a child who would be affected by a decision to impose or maintain the no recourse to public funds condition

Where the above criteria have not been met, you must not grant access to public funds.

Where a child is being granted entry clearance or permission to stay under paragraph D-ECC.1.1. or D-LTRC.1.1. in-line with their parent, they must be subject to the same conditions in respect of access to public funds as their parent who is being, or has been, granted as a partner under Appendix FM.

For detailed guidance on assessing when to grant access to public funds see Access to public funds – family, private life and Hong Kong BN(O) routes (internal link).

Decision to refuse entry clearance or leave to remain

The application will fall for refusal if you are not satisfied that all of the requirements of R-LTRP.1.1.(a), (b) and (c) or (d) are met.

Where an applicant does not meet those requirements of the partner route under Appendix FM, you must consider whether the applicant meets the requirements for leave to remain on the basis of private life in the UK: see the following guidance: Private life in the UK (internal link).

In every case otherwise falling for refusal under Appendix FM, you must go on to consider, under paragraphs GEN.3.2. to GEN.3.3. of Appendix FM, whether in the light of all the information and evidence provided by the applicant, there are exceptional circumstances which would render refusal a breach of European Convention on Human Rights (ECHR) Article 8, because it would result in unjustifiably harsh consequences for the applicant, a relevant child or another family member whose Article 8 rights it is evident from the information provided by the applicant would be affected.

For guidance on exceptional circumstances and children’s best interests, see the Exceptional circumstances section in accordance with paragraphs GEN.3.1. to 3.3. of Appendix FM whether there are any exceptional circumstances that require a grant of entry clearance or leave to remain on ECHR Article 8 grounds because refusal could or would result in unjustifiably harsh consequences for the applicant or their family.

Entry clearance or leave to remain as a partner will be refused if you are not satisfied that all of the relevant requirements of the Immigration Rules are met or that there are exceptional circumstances.

The decision notice should indicate the reasons for refusal with reference to the relevant suitability and / or eligibility or exceptional circumstance paragraphs.

Related content
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Children whose sponsor has protection status in the UK

In the main, children applying under Appendix FM will be applying to join, accompany or remain with a parent who has or is being granted permission under Appendix FM.

Following the suspension of the Appendix Family Reunion (Sponsors with Protection) route, children who wish to join a parent with protection status in the UK may apply to do so under Appendix FM. Where this is the case, the child must provide evidence of meeting the financial requirement set out at E-ECC.2.1. if applying for entry clearance or E-LTRC.2.1. if applying for permission to stay. They must also provide evidence to show they meet the relationship requirements set out at E-ECC.1.2.- E-ECC.1.6. if applying for entry clearance and E-LTRC.1.2.- E-LTRC.1.6. if applying for permission to stay. For further information on assessing applications from children, including how to consider sole responsibility and serious and compelling circumstances see: Annex FM 3.2: children guidance.

Where they are unable to meet the financial and / or relationship requirements, you must go onto consider whether they meet the exceptional circumstances requirements set out at GEN.3.1. and GEN.3.2. See Exceptional circumstances.

Where a child applicant meets the requirements and is joining / accompanying both parents in the UK, where one parent has protection status and the other has or is being granted permission under Appendix FM, you must grant permission in line with the applicant's parent under Appendix FM on the same conditions as that parent. Where both parents have protection status, you must grant permission to the child in line with the parent whose permission expires later.

Where a child applicant is joining a sole sponsoring parent and that sponsor has protection status in the UK, you should grant permission in line with the sole sponsoring parent on the same conditions as that parent with protection status in the UK.

For further guidance on children see: Annex FM 3.2: children guidance.

Related content
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Family life as a parent – eligibility

This section tells you how to consider applications under the Immigration Rules based on family life as the parent of a child in the UK.

The eligibility requirements for entry clearance as a parent are set out in paragraphs E-ECPT.1.1. to E-ECPT.4.2. of Appendix FM.

The eligibility requirements for leave to remain as a parent are set out in paragraphs E-LTRPT.2.2. to E-LTRPT.5.2. of Appendix FM.

Eligibility informs who qualifies for leave as a parent on a 5 or 10-year route to settlement

The route to settlement (5-year or 10-year) an applicant can qualify for, depends on whether all, some or no eligibility requirements are met.

All eligibility requirements must be met for a parent to qualify for entry clearance or leave to remain on the 5-year route.

Otherwise, to qualify for entry clearance or leave to remain on a 10-year route:

- an applicant must meet all eligibility requirements, and rely on other sources of income to meet the adequate maintenance and accommodation eligibility requirements because there are exceptional circumstances in accordance with GEN.3.1. of Appendix FM
- an applicant meets some but qualifies for an exception to certain eligibility requirements because EX.1.(a) of Appendix FM applies
- an applicant meets some or no eligibility requirements but there are exceptional circumstances in accordance with paragraph GEN.3.2. of Appendix FM

Eligibility that must be met by a parent on a 5 or 10-year route (without consideration of exceptional circumstances under GEN.3.1. or GEN.3.2.)

All of the following eligibility requirements must be met.

General

This section applies to entry clearance and leave to remain applications as the parent of a child living in the UK, where the applicant is aged 18 or over at the date of application and the child meets one of the following:

- is under the age of 18 years at the date of application
- has turned 18 years of age since the applicant was first granted entry clearance or leave to remain as a parent under Appendix FM and has not formed an

independent family unit or be leading an independent life as defined in paragraph 6 of the Immigration Rules

Under paragraph 27 of the Immigration Rules, you must make a decision on an application for entry clearance in the light of the circumstances existing at the time of decision. The exception to this is where a child reaches the age of 18 after such an application has been lodged, but before it has been decided. In that situation, the application should not be refused solely because the applicant has turned 18.

For the purpose of entry to the UK, the child must be one of the following:

- a British citizen
- settled in the UK
- a European Economic Area (EEA) or Swiss national in the UK with limited leave under Appendix EU in accordance with paragraph GEN.1.3.(d)

For the purpose of leave to remain, the child must, either:

- be a British citizen
- be settled in the UK
- be an EEA or Swiss national in the UK with limited leave under Appendix EU in accordance with paragraph GEN.1.3.(d)
- have lived in the UK continuously for at least the 7 years immediately preceding the date of application and paragraph EX.1. applies

A parent of a child with protection status in the UK is not eligible to join, or remain with, that child under Appendix FM.

‘Living in the UK’ means that the child concerned is living in the UK at the date of application and is physically present here. As a settlement route, the applicant should intend to make the UK their home with the child, if the application is successful. A parent applicant cannot rely on their relationship with a child who is overseas to obtain leave in this route.

The applicant must prove that the child with whom they have a relevant relationship is under the age of 18. The best evidence is the child’s birth certificate. If the applicant submits other forms of evidence, you must be satisfied that they prove the child is under the age of 18.

Where a child has turned 18 years of age since the applicant was first granted entry clearance or leave to remain as a parent under Appendix FM, the child must not have formed an independent family unit or be leading an independent life.

‘Must not be leading an independent life’ or ‘is not leading an independent life’ means that the applicant does not have a partner (as defined in paragraph GEN.1.2. of Appendix FM), is living with their parents (except where they are at boarding school, college or university as part of their full-time education), is not employed full-time (unless aged 18 years or over), is wholly or mainly dependent upon their parents for financial support (unless aged 18 years or over), and is wholly or mainly

dependent upon their parents for emotional support. This is set out in paragraph 6 of the Immigration Rules.

For both entry clearance and leave to remain applications as a parent, if the child normally lives with their other British citizen or settled parent or carer, that person cannot be the partner of the applicant (which for leave to remain includes a person who has been in a relationship with the applicant for less than 2 years prior to the date of application) and the applicant must not be eligible to apply for entry clearance or leave to remain as a partner under Appendix FM.

The parent route is not for couples who are in a genuine and subsisting partner relationship. An applicant cannot meet the parent route if they are eligible to apply under the partner route. Those eligible to apply as partners are those who meet the definition of partner at paragraph 6.2 and who have a qualifying sponsor enabling them to access a 5 or 10 year partner route, for example a partner who meets the immigration status requirement. Applicants in this position must apply or will only be considered (where they are not required to make a valid application), under the partner route, or under the private life route.

As well as including a natural parent, under paragraph 6 of the Immigration Rules, a 'parent' is defined as:

> (a) biological parent; and
> (b) legal parent, including birth mother where the child is not genetically related, spouse or civil partner of the birth mother at the time of the child's birth, and person with a parental order under section 54, or section 54A of the Human Fertilisation and Embryology Act 2008; and
> (c) adoptive parent:
>
> > (i) who, when habitually resident outside the UK, adopted a child in accordance with a decision taken by the competent administrative authority or court in a country whose adoption orders are recognised by the UK; or
> > (ii) whose adopted child has been granted permission under Appendix Adoption, or Part 8 of these Rules, and, if applicable, the adoption has been formally completed in the UK.

Relationship with the child

For entry clearance applications where the applicant is outside the UK, when considering paragraphs E-ECPT.2.3. and E-ECPT.2.4., you must be satisfied that the applicant has:

- sole parental responsibility for the child
- direct access (in person) to the child, as agreed with the parent or carer with whom the child normally lives or as ordered by a court in the UK- in addition in such cases:
  - the parent or carer with whom the child normally lives must be a British citizen in the UK or settled in the UK and not the partner of the applicant
  - the applicant must not be eligible to apply for entry clearance as a partner under Appendix FM

In all cases, the applicant must provide evidence that they are taking, and intend to continue to take, an active role in the child's upbringing.

For leave to remain applications where the applicant is in the UK, when considering paragraphs E-LTRPT.2.3. and E-LTRPT.2.4. you must be satisfied that:

- the applicant has sole parental responsibility for the child
- the child normally lives with the applicant and not their other parent (who is a British citizen or settled in the UK), and the applicant must not be eligible to apply for leave to remain as a partner under Appendix FM
- the parent or carer with whom the child normally lives must be a British Citizen, settled, or an EEA or Swiss national in the UK with limited leave under Appendix EU in accordance with paragraph GEN.1.3.(d)

If the child normally lives with their parent or carer who is British, settled, or an EEA or Swiss national in the UK with limited leave under Appendix EU in accordance with paragraph GEN.1.3.(d), and not the applicant:

- the applicant cannot be the partner of this parent or carer who is British, settled or an EEA or Swiss national in the UK with limited leave under Appendix EU in accordance with paragraph GEN.1.3.(d)
- the applicant must not be eligible to apply for leave to remain as a partner under Appendix FM

Under paragraph E-LTRPT.2.4.(a) you must be satisfied that the applicant has provided evidence to show that they have either:

- sole parental responsibility for the child, or that the child normally lives with them
- direct access in person to the child, as agreed with the parent or carer with whom the child normally lives, or as ordered by a court in the UK, any court documents issued by the family court must have written permission for disclosure by the court to be used as evidence

You must also be satisfied under paragraph E-LTRPT.2.4.(b) that in all cases the applicant has provided evidence that they are taking, and intend to continue to take, an active role in the child's upbringing.

The applicant must provide evidence they meet the parental relationship requirement. Guidance on the meaning of 'sole parental responsibility', 'normally lives with' and 'direct access in person' can be found below.

Sole parental responsibility

Sole parental responsibility for the purpose of the Immigration Rules, must be interpreted as set out in this guidance.

Sole parental responsibility means that one parent has abdicated or abandoned parental responsibility, and the remaining parent is exercising sole control in setting and providing the day-to-day direction for the child's welfare.

In assessing whether the applicant has sole parental responsibility for a child, you must consider if evidence has been provided to show that:

- decisions have been taken and actions performed in relation to the upbringing of the child under the sole direction of the applicant, without the input of the other parent or any other person
- the applicant parent is responsible for the child's welfare and for what happens to them in key areas of the child's life, and that others do not share this responsibility for the child
- the applicant parent has exclusive responsibility for:
  - making decisions regarding the child's education, health and medical treatment, religion, residence, holidays and recreation
  - protecting the child and providing them with appropriate direction and guidance
  - the child's property
  - the child's legal representation

In addition you should note that:

- sole parental responsibility is not the same as legal custody
- significant or even exclusive financial provision for a child does not in itself demonstrate sole parental responsibility
- where both parents are involved in the child's upbringing, it will be rare for one parent to establish sole parental responsibility
- sole parental responsibility can be recent or long-standing- any recent change of arrangements should be scrutinised to make sure this is genuine and not an attempt to circumvent immigration control

It is unrealistic for a child to have contact with no other adult other than the parent exercising sole responsibility. We accept that the child will have contact with other adults, including relatives, and that these are likely to include some element of care towards the child, either generally or specifically such as taking the child to school. Actions of this kind that include looking after the child's welfare may be shared with others who are not parents, for example, relatives or friends, who are available in a practical sense, providing the applicant has overall responsibility, on their own, for the welfare of the child.

You are not considering whether the applicant (or anyone else) has day-to-day responsibility for the child, but whether the applicant has continuing sole control and direction of the child's upbringing, including making all the important decisions in the child's life. If not, then they do not have sole parental responsibility for the child. You must carefully consider each application on a case-by-case basis. The burden of proof is on the applicant to provide satisfactory evidence. In some instances, it may be appropriate to interview an applicant to establish whether they have sole responsibility for the child, or to contact the other parent (with the consent of the applicant) in order to confirm they have no parental responsibility.

Normally lives with

This applies where both parents (one of whom is a British citizen or settled person) are no longer in a subsisting relationship, but have retained shared parental rights and responsibilities, and the child's primary custodial residence preceding the date of application, as demonstrated by a court order or consensual agreement, is with one of them. Any information which is submitted which relates to proceedings in the Family Court must not be disclosed without the Family Court's written permission. From 13 December 2012 applicants for leave to remain in the UK can apply in this category where they have either:

- a joint residence order
- other evidence of shared custody of a child or children in the UK

The purpose of this provision is to allow a migrant parent whose relationship with a British citizen or settled person has broken down, and who has shared or equal custody of a child here, to remain in the UK where it is in the child's best interest for them to do so.

The fact that an applicant is simply a parent of a child in the UK is not enough to meet the requirements of the rules.

You must be satisfied that:

- the relationship between the applicant and the other parent has broken down and is no longer subsisting
- the applicant has joint or shared custody of the child or children
- evidence of shared custody has been provided in the form of a court order that has been permitted for disclosure by the Family Court or consensual agreement with the parent who is a British citizen, settled or an EEA or Swiss national in the UK with limited leave under Appendix EU in accordance with paragraph GEN.1.3.(d)
- evidence has been provided to demonstrate that the child normally lives with the applicant in the UK (and not their parent who is a British citizen, settled or an EEA or Swiss national in the UK with limited leave under Appendix EU in accordance with paragraph GEN.1.3.(d)), or that the child normally lives with their the parent who is a British citizen, settled or an EEA or Swiss national in the UK with limited leave under Appendix EU in accordance with paragraph GEN.1.3.(d), and not the applicant, but has regular direct contact with the latter
- the applicant does not have another partner

The primary residence of the child is the residence where the child spends most of their time. For example, parents may have joint custody of the child but the child may spend the majority of the time with only one of their parents, thereby having their primary residence with that parent.

In legal terms, a child can only have one primary residence. However, where a child spends equal time with either parent, for example 7 days out of 14 with both throughout the year, for the purposes of this route, the child will be considered to 'normally live with' the applicant.

A child will not ‘normally live with’ a parent whom the child occasionally lives with, for example, only at weekends, during holidays or by an overnight stay once a week.

There is no specified evidence that the applicant has to provide in order to demonstrate whom a child normally lives with, but the onus is on the applicant to show that a child normally lives with them or with the parent who is a British citizen, settled or an EEA or Swiss national in the UK with limited leave under Appendix EU in accordance with paragraph GEN.1.3.(d).

Evidence to show that a child normally lives with a person may include correspondence from:

- a court in the form of a court order showing joint or shared custody that has been permitted for disclosure by the family court (written evidence is required from the Family Court confirming that relevant court documents can be disclosed to the Home Office)
- the other partner confirming joint or shared custody
- a doctor, hospital or dentist
- a school, childcare provider or playgroup
- the Department for Work and Pensions
- HM Revenue & Customs
- local authority children’s services

However, other evidence will also be accepted, provided that it enables you to be satisfied that a child normally lives with the stated person.

Child does not normally live with the applicant

If the applicant does not have sole parental responsibility for the child and the child does not normally live with them, they must supply evidence to show that the parent or carer with whom the child normally lives is a British Citizen, settled in the UK or an EEA or Swiss national in the UK with limited leave under Appendix EU in accordance with paragraph GEN.1.3.(d), and that that person cares for the child.

Evidence can include:

- a British passport
- a foreign passport endorsed with ‘indefinite leave to remain’ or ‘no time limit’
- a letter from the Home Office confirming that the person is settled in the UK
- evidence that the child resides with the parent who is a British citizen, settled or an EEA or Swiss national in the UK with limited leave under Appendix EU in accordance with paragraph GEN.1.3.(d)

Direct access in person

An applicant can qualify for leave as a parent if they have direct access in person to the child, as agreed with the parent or carer with whom the child normally lives or as

ordered by a court in the UK. The applicant must prove they have direct access in person to the child by submitting evidence such as:

- a residence order or contact order granted by a court in the UK (any order issued by the Family Court must be accompanied by written confirmation from the Family Court that it can be disclosed to the Home Office)
- a letter or affidavit from the UK-resident parent or carer of the child
- evidence from a contact centre detailing contact arrangements

The above evidence, or a reasonable equivalent, should establish that the applicant parent has direct access in person to the child, and describe in detail the arrangements which allow for this. If an affidavit is submitted, it should be certified by a lawyer.

It is not enough for the applicant to provide evidence only that they have been granted direct access to a child. The rules require the applicant to show that they have direct access in person to the child and are taking an active role in the child's upbringing and will continue to do so. You must be satisfied that direct contact in person with the child is the main reason for the application.

Immigration status requirements

This section applies to leave to remain applications only.

The immigration status requirements are set out in paragraphs E-LTRPT.3.1. to E-LTRPT.3.2. of Appendix FM. To qualify for leave to remain as a parent the applicant must not be in the UK:

- as a visitor
- with valid leave granted for a period of 6 months or less, unless that leave was granted pending the outcome of family court or divorce proceedings
- on Immigration Bail unless the Secretary of State is satisfied that the applicant arrived in the UK more than 6 months prior to the date of application and paragraph EX.1. applies
- in breach of immigration laws (except that, where the Exceptions for overstayers section of Part Suitability applies, any current period of overstaying will be disregarded) unless EX.1. applies

Where the applicant is in the UK as a visitor, it means that they have undertaken to leave the UK before their leave expires. In all cases, visa or non-visa nationals have satisfied the entry clearance officer or immigration officer that they will do so, or have used eGates to enter the UK on presumption of compliance with the conditions of their stay. In view of that, a visitor cannot apply to remain in the UK in another category in the Immigration Rules.

Those wishing to come to the UK to settle here as a partner or parent should apply for entry clearance under the family Immigration Rules. It is only where there are exceptional circumstances that arise when the visitor is in the UK, that a person here as a visitor can remain on the basis of their family life.

For further guidance on applications from overstayers and Exceptions for overstayers section of Part Suitability, see:

- Applications from overstayers (internal)
- Applications from overstayers (external)

Eligibility that must be met by a parent to start or stay on a 5-year route

All of the following eligibility requirements must also be met to qualify for entry clearance or leave to remain on a 5-year route.

Financial – maintenance

This section applies to entry clearance and leave to remain applications.

To qualify for entry clearance or leave to remain as a parent on the 5-year route to settlement the applicant must meet the financial requirements in Appendix FM - Family life as a parent.

The relevant paragraphs are:

- entry clearance: E-ECPT.3.1.
- leave to remain: E-LTRPT.4.1.

In order to meet the financial requirements, the applicant must provide evidence that they will be able to adequately maintain and accommodate themselves and any dependants in the UK without access to public funds.

For guidance on the maintenance requirements, see Appendix FM and Adult Dependent Relative - maintenance and accommodation (formerly FM1.7A - Maintenance) (internal link).

Copies of all documentary evidence submitted should be retained on file, in chronological order.

Financial – accommodation

This section applies to entry clearance and leave to remain applications.

To qualify for entry clearance or leave to remain as a parent on the 5-year route to settlement the applicant must meet the accommodation requirement in Appendix FM - Family life as a parent. The relevant paragraphs are:

- entry clearance: E-ECPT.3.2.
- leave to remain: E-LTRPT.4.2.

The applicant must provide evidence that there will be adequate accommodation, without access to public funds, for the family (including other family members who are not included in the application but who live in the same household), which the family own or occupy exclusively.

Accommodation will not be regarded as adequate if:

- it is, or will be, overcrowded
- it contravenes public health regulations

For further guidance on the accommodation requirement, see: Family members - Maintenance and accommodation (internal link).

English language

This section applies to entry clearance and leave to remain applications.

General

To qualify for entry clearance or leave to remain as a parent on the 5-year route to settlement the applicant must meet the English language requirement in Appendix FM - Family life as a parent. The relevant paragraphs are:

- entry clearance: E-ECPT.4.1. to E-ECPT.4.2.
- leave to remain: E-LTRPT.5.1. and E-LTRPT.5.2.

Entry clearance and leave to remain

Under paragraphs E-ECPT.4.1. to 4.2 and paragraphs E-LTRPT.5.1. to 5.2. the applicant must provide evidence as specified in paragraphs 27 to 32D of Appendix FM-SE that the English language requirement is met.

An applicant for leave to remain who was exempt from the language requirement has to meet the requirement at paragraphs E-LTRPT.5.1. to 5.2. when they apply for further leave to remain in the UK under the 5-year route to settlement, unless they again qualify for an exemption, on the same or a different basis.

For guidance on the English language requirements, including exemptions, see English language requirement family members (internal link).

EX.1. Exceptions to certain eligibility requirements for leave to remain as a parent

To meet the requirements of R-LTRPT.1.1.(d)(iii) as a parent, paragraph EX.1.(a) must apply in the applicant's case.

Where paragraph EX.1.(a) does not apply, an applicant will not be able to meet the requirements of R-LTRPT.1.1.(d)(iii), regardless of whether they meet the requirements of R-LTRPT.1.1.(d)(i) and (ii).

See: section on EX.1.

Decision to grant entry clearance or leave to remain as a parent

Under paragraph D-ECPT.1.1., if the applicant meets the requirements for entry clearance as a parent under the 5-year route, they should be granted entry clearance for an initial period of no more than 33 months.

Where an applicant meets the requirements for leave to remain as a parent of a child in the UK under paragraph R-LTRPT.1.1.(a), (b) and (c) or (d), the applicant will be granted leave to remain for a period not exceeding 30 months as a parent under paragraph D-LTRPT.1.1. or D-LTRPT.1.2. of Appendix FM.

The applicant should be advised they will need to make an application for leave to remain once they have completed a period of 30 months in the UK. They should make that application no more than 28 days before their extant leave is due to expire, or no more than 28 days before they have completed 30 months in the UK with leave as a parent. They may be able to qualify for indefinite leave to remain (settlement) after completing 60 months (5 years) or 120 months (10 years) in the UK with limited leave as a parent.

Where an applicant currently has extant leave to enter or remain as a parent of a child in the UK under Appendix FM at the date of application, that period of extant leave, up to a maximum of 28 days, will be added to the period of leave to remain that they are being granted as a parent under paragraph D-LTRPT.1.1. or D-LTRPT.1.2. An applicant with extant leave in this scenario will therefore be granted a period of leave to remain as a parent by up to 28 days in excess of 30 months.

Where a person submits an Appendix FM parent application up to 28 days before they have completed 30 months in the UK with leave to enter or remain as a parent under Appendix FM, that person will be considered to have met the required continuous residence period of 30 months as a parent. A person who applies more than 28 days before their leave is due to expire or they have completed the relevant qualifying period may not meet the requirement to have completed at least 60 or 120 months in the UK with relevant leave to remain in order to apply to settle and may instead need to apply for a further period of limited leave.

Where a parent is being granted entry clearance, any dependent child included in the application who requires leave should be considered under paragraph EC-C of Appendix FM. If the child meets the requirements of those rules, they should be granted leave to remain under paragraph D-ECC.1.1. of the same duration as their parent who is being, or has been, granted leave under the parent rules of Appendix FM.

Where a parent is being granted leave to remain, any dependent child included in the application who requires leave should be considered under paragraph R-LTRC of Appendix FM. If the child meets the requirements of those rules, they should be granted leave under paragraph D-LTRC.1.1. of the same duration as their parent

who is being, or has been, granted leave to remain as a parent under Appendix FM, unless they qualify for a grant under the Private Life rules (see Approach section of this guidance above).

Access to public funds

In all cases where you are granting entry clearance or permission to stay as a parent under paragraphs D-ECPT.1.1., D-LTRPT.1.1. on the 5-year route to settlement, you must grant with no access to public funds.

In all cases where you are granting entry clearance or permission to stay as a parent under paragraphs D-ECPT.1.2., D-LTRPT.1.2. on the 10-year route to settlement, you must consider whether to grant access to public funds.

You must grant access to public funds where the applicant has provided satisfactory evidence that:

- they are destitute or at risk of imminent destitution
- there are reasons relating to the welfare of a relevant child which outweigh any reasons for not allowing access
- they are facing exceptional financial circumstances relating to their income or expenditure

You may need to make further enquiries to establish whether the above criteria have been met.

When deciding whether to allow access to public funds, the best interests of a relevant child must be treated as a primary consideration.

A ‘relevant child’ means a person who both:

- is under the age of 18 years at the date of application
- it is clear from the information provided by the applicant, is a child who would be affected by a decision to impose or maintain the no recourse to public funds condition

Where the above criteria have not been met, you must not grant access to public funds.

Where a child is being granted entry clearance or permission to stay under paragraph D-ECC.1.1. or D-LTRC.1.1. in-line with their parent, they must be subject to the same conditions in respect of access to public funds as their parent who is being, or has been, granted as a parent under Appendix FM.

For detailed guidance on assessing when to grant access to public funds see: Access to public funds – family, private life and Hong Kong BN(O) routes (internal link).

Decision to refuse entry clearance or leave to remain as a parent

When an application otherwise falls for refusal under the relevant Immigration Rules, you must move on to consider, under paragraph GEN.3.2. of Appendix FM, whether there are any exceptional circumstances that require a grant of entry clearance or leave to remain on European Convention on Human Rights (ECHR) Article 8 grounds because refusal would result in unjustifiably harsh consequences for the applicant or their family.

Refusing entry clearance as a parent

Entry clearance as a parent will be refused if you are not satisfied that all of the relevant requirements of the Immigration Rules are met and is satisfied that there are no exceptional circumstances.

Where refused under paragraph D-ECPT.1.3., the decision notice should indicate the refusal under this paragraph, with reference to the relevant suitability and/or eligibility paragraphs.

In every entry clearance case otherwise falling for refusal under the rules, you must go on to consider whether there are exceptional circumstances. For further guidance see the exceptional circumstances section of this guidance.

You should refer to the refusal section of this guidance for suggested standard refusal paragraphs for inclusion in the refusal notice.

The application will fall for refusal if you are not satisfied that all of the requirements of R-LTRPT.1.1.(a), (b) and (c) or (d) are met.

Where an applicant does not meet those requirements of the parent route under Appendix FM, you must consider whether the applicant meets the requirements for leave to remain on the basis of private life in the UK: see: Private life in the UK (internal link).

In every case otherwise falling for refusal under Appendix FM, you must go on to consider, under paragraphs GEN.3.2. to GEN.3.3. of Appendix FM, whether in the light of all the information and evidence provided by the applicant, there are exceptional circumstances which would render refusal a breach of ECHR Article 8, because it would result in unjustifiably harsh consequences for the applicant, a relevant child or another family member whose Article 8 rights it is evident from the information provided by the applicant would be affected.

For guidance on exceptional circumstances and children's best interests, see the Exceptional circumstances section.

If the applicant does not qualify for leave to remain on the basis of private life and there are no exceptional circumstances as specified above, the application should be refused under paragraph D-LTRPT.1.3. of Appendix FM, and the decision letter

should reference this paragraph. It should also set out which of the requirements the applicant has failed to meet and why.

The decision letter should be clear about the information considered, including evidence submitted by the applicant, together with any relevant guidance considered as part of the assessment under the rules, including in relation to what is considered to be in the best interests of the child. The decision letter should make plain that all relevant factors have been considered, in the round.

Related content
Contents

EX.1. Exceptions to certain eligibility requirements being met by a partner or parent in the UK

EX.1. – general

Where an applicant in the UK does not fall to be granted on a 5-year route as a partner or parent because certain eligibility - financial, accommodation, English language or immigration status - requirements are not met, they may still fall for a grant of leave on a 10-year route if EX.1. applies.

Paragraph EX.1. is not a standalone provision under which leave can be granted. Rather, where it applies, certain eligibility requirements under the 5-year partner or parent route (as to immigration status, finances and English language) do not have to be met. By not meeting the financial, English language or lawful immigration status eligibility requirements, the applicant is not entitled to leave to remain as a partner or parent under the 5-year route. However, if EX.1. applies to them, they may be considered for the 10-year route if they meet all other requirements.

The requirements in paragraph EX.1.(a) reflect the duty in section 55 of the Borders, Citizenship and Immigration Act 2009 to have regard to the need to safeguard and promote the welfare of children, by which we mean their best interests, as reflected in case law, in particular, ZH (Tanzania) v Secretary of State for the Home Department [2011] UKSC 4.

You must have regard to the best interests of the child as a primary consideration (but not the only or the paramount consideration).

Paragraph EX.1. states:

> ‘EX.1. This paragraph applies if
>
> (a) (i) the applicant has a genuine and subsisting parental relationship with a child who-
>
> (aa) is under the age of 18 years;
> (bb) is in the UK;
> (cc) is a British Citizen or has lived in the UK continuously for at least the 7 years immediately preceding the date of application; and
>
> (ii) taking into account their best interests as a primary consideration, it would not be reasonable to expect the child to leave the UK; **or**
>
> (b) the applicant has a genuine and subsisting relationship with a partner who is in the UK and is a British Citizen, settled in the UK, in the UK with protection status, an EEA or Swiss national in the UK with limited leave under Appendix EU in accordance with paragraph GEN.1.3.(d), in the UK with limited leave as

a worker or business person under Appendix ECAA Extension of Stay in accordance with paragraph GEN.1.3.(e), or in the UK with permission as a stateless person and there are insurmountable obstacles to family life with that partner continuing outside the UK..'

Paragraph EX.2. of Appendix FM states that:

'EX.2. For the purposes of paragraph EX.1.(b) 'insurmountable obstacles' means the very significant difficulties which would be faced by the applicant or their partner in continuing their family life together outside the UK and which could not be overcome or would entail very serious hardship for the applicant or their partner.'

An applicant being considered under the 10-year partner route must meet the requirements set out at either EX.1.(a) or EX.1.(b). They do not have to meet both (a) and (b).

Even if the requirements in EX.1.(a) or (b) are met, an applicant will not qualify for leave to remain under the 10-year partner route on this basis if they do not meet all of the other requirements of paragraph R-LTRP.1.1(a), (b) and (d) of the Immigration Rules, including both the suitability requirements set out at paragraph R-LTRP.1.1.(d)(i) and the eligibility requirements set out at paragraph R-LTRP.1.1(d)(ii). These are outlined in the following sections of this guidance:

- Suitability requirements
- Family life as a partner – eligibility

An applicant being considered under the 10-year parent route must meet the requirements set out at EX.1.(a). They cannot meet (b) because those who seek to remain as a parent cannot be eligible to apply as a partner.

Even if the requirements in EX.1.(a) are met, an applicant will not qualify for leave to remain under the 10-year parent route on this basis if they do not meet all of the other requirements of paragraph R-LTRPT.1.1(a), (b), and (d) of the Immigration Rules, including both the suitability requirements set out at paragraph R-LTRPT.1.1.(d)(i) and the eligibility requirements set out at paragraph R-LTRPT.1.1(d)(ii). These are outlined in the following sections of this guidance:

- Suitability requirements
- Family life as a parent – eligibility

EX.1.(a) – reasonable to expect

The requirements in paragraph EX.1.(a) reflect the duty in section 55 of the Borders, Citizenship and Immigration Act 2009 to have regard to the need to safeguard and promote the welfare of children, by which we mean their best interests, as reflected in case law, in particular, ZH (Tanzania) v Secretary of State for the Home Department [2011] UKSC 4.

First you must determine under paragraph EX.1.(a)(i) whether the applicant has a genuine and subsisting parental relationship with a child under the age of 18 who is in the UK and is a British citizen or has lived in the UK continuously for at least the 7 years immediately preceding the date of application.

You must undertake an assessment under all parts of paragraph EX.1.(a).

Is there a qualifying child?

You should establish from the application or claim the age and nationality of each child affected by the decision. Where the child is a foreign national, you should establish their immigration history in the UK (for example how long have they lived in the UK and where they lived before).

In establishing whether a non-British Citizen child has lived in the UK continuously for at least the 7 years immediately preceding the date of application, you should include time spent in the UK with and without valid leave.

Short periods outside the UK – for example for holidays or family visits – would not count as a break in the continuous period of at least 7 years required. However, where a child has spent more than 6 months out of the UK at any one time, this will normally count as a break in continuous residence unless any exceptional factors apply.

A child is a qualifying child if they are a British child who has an automatic right of abode in the UK, to live here without any immigration restrictions as a result of their citizenship, or a non-British citizen child, who has lived in the UK for a continuous period of at least the 7 years immediately preceding the date of application, which recognises that over time children start to put down roots and to integrate into life in the UK.

Is there a genuine and subsisting parental relationship?

The term ‘parent’ is defined in paragraph 6 of the Immigration Rules. A parent however, does not necessarily have a genuine and subsisting parental relationship to a child. Similarly, a person who is not a child’s parent may have a genuine and subsisting parental relationship to a child, where they are playing a genuinely parental role in a child’s life.

You must be satisfied that the applicant has parental responsibility for the child. This can be the case even where there has been no finding of whether they are recognised as the person with parental responsibility in law, for example through provision of a court order or following formal adoption of the child. You may decide that there is no genuine and subsisting relationship where for example, a parent has the benefit of a court order but chooses not to, or chooses only unreliably and infrequently, to take up contact.

The contact can be indirect although it is likely, although not inevitable, that a relationship will not be sufficient to engage Article 8 if there is no or infrequent

contact. Where the contact is not direct, the reasons for that must be adequately considered.

It is not generally expected that more than 2 people could be in a genuine and subsisting parental relationship with the child. Other people who spend time with or reside with the child in addition to their parents, such as a grandparent, aunt or uncle or other family member, or a close friend of the family, would not generally be considered to have a parental relationship with the child for the purposes of this guidance. Where there are 2 parents, unless evidence is provided to the contrary, it should be assumed that one or both could provide parental responsibility for the child.

In each case a finding on whether there is a genuine and subsisting parental relationship capable of engaging Article 8 is highly fact specific.

You should consider whether the applicant is:

- the child's parent
- taking an active role in the child's upbringing and making decisions that directly affect them
- the child's primary or secondary carer
- willing and able to look after the child
- living with the child
- seeing the child on a regular basis
- making an active contribution to the child's life

Consideration should also be given to whether there are any relevant court orders (which, in relation to Family Court orders, are accompanied with written confirmation from the Family Court that they can be disclosed to the Home Office) governing access to the child and if there is any evidence provided within the application as to the views of the child, other family members or social workers or other relevant professionals.

Factors which might prompt closer scrutiny include:

- the person has little or no contact with the child or contact is irregular
- any contact is only recent or is infrequent or sporadic
- support is financial in nature; but there is little or no contact or emotional support
- the child is largely independent of the person

Where it is considered that a relationship is not of sufficient gravity to engage Article 8, you are not required to move on to consider whether it is reasonable for the child to leave the UK. **There can be no breach of Article 8 where the relationship is insufficient to engage it.**

Is it reasonable for the child to leave the UK?

Where you decide that the answer to this first stage is yes – there is a genuine and subsisting relationship to a child, then you must go on to consider secondly, whether, taking into account the child's best interests as a primary consideration, it is reasonable to expect the child to leave the UK. In doing so you must carefully consider all the information provided by the applicant, together with any other relevant factor and information of which you are aware.

In accordance with the findings in the case of AB Jamaica (Secretary of State for the Home Department v AB (Jamaica) & Anor [2019] EWCA Civ 661), consideration of whether it is reasonable to expect a child to leave the UK must be undertaken regardless of whether the child is actually expected to leave the UK.

The starting point is that we would not normally expect a qualifying child to leave the UK. It is normally in a child's best interest for the whole family to remain together, which means if the child is not expected to leave, then the parent or parents or primary carer of the child will also not be expected to leave the UK.

In the caselaw of KO (Nigeria) & Others v Secretary of State for the Home Department 2018 UKSC53, with particular reference to the case of NS (Sri Lanka), the Supreme Court found that 'reasonableness' is to be considered in the real-world context in which the child finds themselves. The parents' immigration status is a relevant fact to establish that context. The determination sets out that if a child's parents are both expected to leave the UK, the child is normally expected to leave with them, unless there is evidence that that it would not be reasonable.

This assessment must take into account the child's best interests as a primary consideration.

You must carefully consider all the relevant points raised in the application and carefully assess any evidence provided. Decisions must not be taken simply on the basis of the application's assertions about the child, but rather on the basis of an examination of all the evidence provided. All relevant factors need to be assessed in the round.

There may be some specific circumstances where it would be reasonable to expect the qualifying child to leave the UK with the parent or parents. In deciding such cases you must consider the best interests of the child and the facts relating to the family as a whole. You should also consider any specific issues raised by the family or by, or on behalf of the child (or other children in the family).

It may be reasonable for a qualifying child to leave the UK with the parent or primary carer where for example:

- the parent or parents, or child, are a citizen of the country and so able to enjoy the full rights of being a citizen in that country
- there is nothing in any country specific information, including as contained in relevant country information which suggests that relocation would be unreasonable

- the parent or parents or child have existing family, social, or cultural ties with the country and if there are wider family or relationships with friends or community overseas that can provide support:
  - you must consider the extent to which the child is dependent on or requires support from wider family members in the UK in important areas of their life and how a transition to similar support overseas would affect them
  - a person who has extended family or a network of friends in the country should be able to rely on them for support to help integrate or reintegrate there
  - parent or parents or a child who have lived in or visited the country before for periods of more than a few weeks should be better able to adapt, or the parent or parents would be able to support the child in adapting, to life in the country
  - you must consider any evidence of exposure to, and the level of understanding of, the cultural norms of the country
  - for example, a period of time spent living amongst a diaspora from the country may give a child an awareness of the culture of the country
  - the parents or child can speak, read and write in a language of that country, or are likely to achieve this within a reasonable time period
  - fluency is not required – an ability to communicate competently with sympathetic interlocutors would normally suffice
- removal would not give rise to a significant risk to the child's health
- there are no other specific factors raised by or on behalf of the child

The parents' situation is a relevant fact to consider in deciding whether they themselves and therefore, their child is expected to leave the UK. Where both parents are expected to leave the UK, the natural expectation is that the child would go with them and leave the UK, and that expectation would be reasonable unless there are factors or evidence that means it would not be reasonable.

EX.1.(b) – insurmountable obstacles

The definition of insurmountable obstacles in paragraph EX.1.(b) is set out in paragraph EX.2. of Appendix FM as:

> 'EX.2. For the purposes of paragraph EX.1.(b) 'insurmountable obstacles' means the very significant difficulties which would be faced by the applicant or their partner in continuing their family life together outside the UK and which could not be overcome or would entail very serious hardship for the applicant or their partner.'

This means that an insurmountable obstacle can take 2 forms:

- a very significant difficulty which would be literally impossible to overcome, so it would be impossible for family life with the applicant's partner to continue overseas – for example because they would not be able to gain entry to the proposed country of return
- a very significant difficulty which would be faced by the applicant or their partner in continuing their family life together outside the UK and which could

be overcome but to do so would entail very serious hardship for one or both of them

When assessing an application under paragraph EX.1.(b) and determining whether there are ‘insurmountable obstacles’, you should have regard to the individual circumstances of the applicant and their partner, based on all the information that has been provided. The onus is on the applicant to show that there are insurmountable obstacles, not on you to show that there are not.

The assessment of whether there are ‘insurmountable obstacles’ is a different and more stringent assessment than whether it would be ‘reasonable to expect’ the applicant’s partner to join them overseas. For example, a British citizen partner who has lived in the UK all their life, has friends and family here, works here and speaks only English may not wish to uproot and relocate halfway across the world, and it may be very difficult for them to do so. However, a significant degree of hardship or inconvenience does not amount to an insurmountable obstacle. ECHR Article 8 does not oblige the UK to accept the choice of a couple as to which country they would prefer to reside in.

Relevant country of origin information should be referred to when assessing insurmountable obstacles. You should consider the specific claim made and the relevant national laws, attitudes and situation in the relevant country.

The assessment of whether family life can continue overseas will generally consider the likely situation in the proposed country of return unless there is information to suggest that the applicant or their partner might have a choice about where they choose to relocate to, such as where one or both of them has or have a right to reside in a country other than the country of proposed return, or where one or both of them has or have more than one nationality. In that case you should consider whether there are insurmountable obstacles to family life continuing in any of the relevant countries.

Lack of knowledge of a language spoken in the country in which the couple would be required to live would not usually amount to an insurmountable obstacle. It is reasonable to assume that the couple have a language in which they can communicate together. Therefore, it is possible for family life to continue outside the UK, whether or not the partner chooses to also learn a language spoken in the country of proposed return. Although inability to speak the language of that country may cause difficulties for the partner, it is very unlikely to amount to very serious hardship: many people successfully move to a country where, at first, they do not speak the language.

Being separated from extended family members – such as where the partner’s parents, their siblings or both live here – would not usually amount to an insurmountable obstacle, unless there were particular factors in the case to establish the unusual or exceptional dependency required for Article 8 to be engaged.

Being separated from a child from a former family relationship, may constitute an insurmountable obstacle if there were particular factors in the case to establish the unusual or exceptional dependency required for Article 8 to be engaged.

Such a claim will normally only succeed where the particular circumstances of the case mean that (taking into account the child's best interests as a primary consideration) it would be unjustifiably harsh to expect the child to relocate overseas with the applicant's partner, or for the applicant's partner to do so without the child.

A material change in quality of life for the applicant and their partner in the country of return, such as the type of accommodation they would live in, or a reduction in their income or standard of living, would not usually amount to an insurmountable obstacle, unless this would lead to particular hardship or there were particular exceptional factors in the case.

The factors which might be relevant when considering whether an insurmountable obstacle exists include but are not limited to:

Ability to lawfully enter and stay in another country

You should consider the ability of the members of the family unit (both the applicant and others) to lawfully enter and stay in another country. The onus is on the applicant to show that it is not feasible for them and their family to enter and stay in another country for this to amount to an insurmountable obstacle. A mere wish, desire or preference to live in the UK is not sufficient.

An example of where it might not be feasible for the family to live together elsewhere might be where the sponsor has gained their settled status in the UK through a protection route, and the applicant is of the same nationality. In the absence of a realistic third country alternative, the settled person's inability to resume life in the country of origin is likely to constitute an obstacle to family life continuing overseas.

You should consider relevant country information (but may not seek to go behind any decision to grant protection status).

Serious cultural barriers to relocation overseas

This might be relevant in situations where the partner would be so disadvantaged by the social, religious or cultural situation in a particular country that they could not be expected to live there.

For example, a same sex couple or an inter-faith couple where the UK partner would face a real risk of prosecution, persecution or serious harm in the country of proposed relocation, as a result of their relationship or faith. Such a barrier must be one which affects their fundamental rights, cannot reasonably be overcome and would present a very serious obstacle to family life being pursued in that country.

You should consider the effect on the UK partner and the degree of difficulty that the family would face living in that country. You should consider the relevant country information when considering whether a family would face very serious hardship in a particular country.

In so doing, you should consider the situation in practice and not just what is provided for in law. So, the fact that a country has a law which criminalises same sex

sexual acts would not be sufficient to show that a couple would face very significant hardship living together in that country if the authorities in practice do not prosecute cases and there is no real risk of prosecution or persecution. The inability of a couple to marry or enter into a civil union, or to have their existing marriage or civil union recognised, in the country of return is not itself an insurmountable obstacle.

Circumstances where the sponsor is British or settled and the family have chosen to be separated, or are all living together overseas, differ in nature from circumstances where the sponsor has fled from the country of origin and been granted protection status in the UK. Where family members are applying to stay with a sponsor with protection status in the UK you should consider whether the sponsor is able to live safely in the country or countries where the family could lawfully reside. Where the only country the family could lawfully reside in is the country the sponsor fled from, particular care should be taken. In these circumstances, insurmountable obstacles will generally be found to exist unless there is evidence that the sponsor has returned to that country since being granted protection status in the UK, or there has been a significant change in country circumstances. All cases should be considered on a case by case basis. You should consider the relevant country information in relation to the country or countries in which the applicant and their family could lawfully reside. See also: Revocation of the Sponsor's protection status

The impact of a mental or physical disability or of a serious illness which requires ongoing medical treatment

Moving to another country may involve a period of hardship for any person as they adjust to their new surroundings, whether or not they have a mental or physical disability or a serious illness which requires ongoing medical treatment. But independent medical evidence could establish that a physical or mental disability, or a serious illness which requires ongoing medical treatment, would lead to very serious hardship: for example, due to the lack of adequate health care in the country where the family would be required to live. As such, in the absence of a third country alternative, it could amount to an insurmountable obstacle to family life continuing overseas.

The absence of governance or security in another country

In some circumstances, for example where civil society has broken down as a result of conflict or natural disaster (and such breakdown extends to the country as a whole) requiring family members to commence living there may give rise to very serious hardship. Foreign Office travel advice should not normally be referred to, as that is generally aimed at tourists choosing to visit a country for specific purposes and a limited period. Rather, you should consider the relevant country information in relation to the country or countries in which the applicant and their family could lawfully reside.

Supporting document tiers

The table below shows a non-exhaustive list of evidence that can be submitted by applicants to confirm their relationship with their child/children is genuine. The listed

evidence has been tiered to reflect the significance of the documents when making a decision, tier 1 being the most valued pieces of evidence and tier 3 the least.

Tier 1	Tier 2	Tier 3
Letter from the child / children's school confirming parental relationship	Social Service Documentation which confirms relationship status as claimed / evidence of pursuing access where appropriate	Greetings cards
Letter from Local Education Authority which confirms school placement.	Parental agreement which is overseen by a solicitor and signed	photographs
Letter from GP confirming parental relationship	HMRC letter which confirms child tax credits	Message transcripts
Birth certificates	Letter of support from the child's other parent, accompanied with something to verify the signature (for example, passport), and contact details	Shopping / meal receipts
Medical appointment letters for the child/children	-	Train tickets
Child Support Agency documentation	-	Flight tickets
Court Order documentation (where there is accompanying confirmation from the court that the evidence can be used)	-	School certificates / reports that do not confirm the child / children's address
Reports from Contact Centre that demonstrate that supervised visitation is happening.	-	Older documents - anything dated 4 years prior to application
Health visit reports	-	Letters of support from friends / relatives / religious leader with British citizenship
-	-	Incomplete pages of a child's red medical record book.

Related content
Contents

Exceptional circumstances

This section tells you about Article 8 exceptional circumstances.

Where an application or claim is made by a partner or parent and there are exceptional circumstances that following consideration of GEN.3.2. and GEN.3.3. mean that refusal would result in unjustifiably harsh consequences for the applicant or their family, leave should be granted under D-LTRP.1.2. on the 10-year partner route or under D-LTRPT.1.2. on the 10-year parent route, unless D-LTRP.1.2A. or D-LTRPT.1.2A. apply. This is the case even though the requirements for a grant of leave on either basis could not be met before consideration was given to exceptional circumstances. Dependent children should be granted under D-LTRC.1.1., unless D-LTRC.1.1A. applies, where the parent is being granted under Appendix FM unless the children qualify for a grant under the Private Life rules (see Approach section of this guidance above).

Introduction

This section applies to entry clearance and leave to remain applications.

In light of the Supreme Court judgment in MM (Lebanon) & Others v Secretary of State for the Home Department [2017] UKSC 10, which required that, in circumstances where refusal of the application could otherwise breach European Convention on Human Rights (ECHR) Article 8, we take into account other credible and reliable sources of earnings or finance available to a couple in considering whether they meet the minimum income requirement under Appendix FM. The court asked that Appendix FM give 'direct effect' to the Secretary of State's existing duties under section 55 of the Borders, Citizenship and Immigration Act 2009 and Article 3 of UN Convention on the Rights of the Child, to take into account, as a primary consideration, the best interests of a child affected by an immigration decision. The Supreme Court judgment in Agyarko & Ikuga v Secretary of State for the Home Department [2017] UKSC 11, which upheld the Secretary of State's approach in applying a test of 'unjustifiably harsh consequences' for the applicant or their family in deciding (in a case falling for refusal under the Immigration Rules) whether exceptional circumstances existed such that refusal of leave would constitute a breach of Article 8.

The Statement of Changes in Immigration Rules HC 290, which came into effect on 10 August 2017, restructured Appendix FM such that it now provides a complete framework for our Article 8 decision-making in cases decided under it.

Appendix FM, supported by Appendix FM-SE (specified evidence) and Part Suitability (for the relevant general grounds for refusal), now incorporates, in accordance with the criteria the Supreme Court has upheld, all aspects of our Article 8 decision-making in family cases falling to be decided under it. In particular, under HC 290, implemented on 10 August 2017 for all applications decided from that date where:

- an application for entry clearance or limited leave to remain as a partner or child under Appendix FM does not otherwise meet the minimum income requirement, as specified in Appendix FM and, in respect of the evidential and other requirements, in Appendix FM-SE
- refusal of the application could result in unjustifiably harsh consequences for the applicant, their partner or a relevant child, (taking into account, as a primary consideration, the best interests of any relevant child affected by the decision)

then you will consider other credible and reliable sources of income, financial support or funds available to the couple in order to assess whether the minimum income requirement under Appendix FM is met. This provision is made by paragraphs GEN.3.1. and GEN.3.3. of Appendix FM, inserted by HC 290.

Those other credible and reliable sources of income, financial support or funds (such as a guarantee of third party support or the migrant partner's prospective earnings) must enable the minimum income requirement to be met, in order for entry clearance or limited leave to remain to be granted on this basis. Where it is met, this will be granted under the 10-year partner route to indefinite leave to remain (ILR) under Appendix FM, with scope for the applicant to apply in-country to switch to start the 5-year route if they subsequently meet the requirements for this.

Paragraph 21A of Appendix FM-SE, inserted by HC 290, sets out objective criteria by which you will assess the genuineness, credibility and reliability of other sources of income, financial support or funds. Each case will be considered on its merits, in the light of all the information and evidence provided by the applicant. But, generally speaking, the more these criteria are met, the more likely it is that you will be satisfied as to the genuineness, credibility and reliability of the other source or sources of income, financial support or funds and count it towards meeting the minimum income requirement.

Those Appendix FM cases which would previously have fallen for consideration outside the Immigration Rules on Article 8 grounds – subject to the test of whether there were exceptional circumstances which meant refusal would result in unjustifiably harsh consequences for the applicant or their family – will now fall to be considered, against the same test, under Appendix FM: that is, within the Immigration Rules. As before, in conducting this assessment you must take into account, as a primary consideration, the best interests of any relevant child affected by the decision. This provision is made by paragraphs GEN.3.2. and GEN.3.3. of Appendix FM, inserted by HC 290.

Where an applicant is successful on this basis, entry clearance or limited leave to remain will be granted on the 10-year partner or parent route to ILR under Appendix FM, with scope for the applicant to apply in-country to switch to start the 5-year route if they subsequently meet the requirements for this.

These provisions enable Entry Clearance Officers to conduct full Article 8 considerations under Appendix FM, removing the need to refer those entry clearance cases that potentially raise exceptional circumstances (requiring leave to be granted on Article 8 grounds) to the Referred Casework Unit.

Overview

The changes in the Immigration Rules, inserted by HC 290, have 2 key implications for Entry Clearance Officers and caseworkers deciding applications under Appendix FM.

First, where an application for entry clearance or limited leave to remain as a partner or child under Appendix FM does not otherwise meet the minimum income requirement applicable under paragraph E-ECP.3.1., E-ECC.2.1., E-LTRP.3.1., E-LTRP.3.7., E-LTRC.2.1. or E-LTRC.2.5.:

Then, under paragraphs GEN.3.1. and GEN.3.3. of Appendix FM, you must consider whether refusal of the application could breach ECHR Article 8 because it could result in unjustifiably harsh consequences for the applicant, their partner or a relevant child. In conducting this assessment, you must have regard to all of the information and evidence provided by the applicant. You must take into account, as a primary consideration, the best interests of any relevant child.

Where, under paragraph GEN.3.1. of Appendix FM, you consider that refusal could breach ECHR Article 8 because it could result in unjustifiably harsh consequences for the applicant, their partner or a relevant child, you must give the applicant an opportunity to show whether the minimum income requirement can be met through any other credible and reliable source or sources of income, financial support or funds available to the couple.

If the applicant has not already done so, you must contact the applicant (or their legal representative) in writing giving them 21 days in which to provide information and evidence in writing of any other credible and reliable source / sources of income, financial support or funds available to the couple which enables the minimum income requirement to be met. This can be in addition to, or in place of, the income or funds on which the application relied.

Family Migration Appendix FM and Appendix HM Armed Forces Financial Requirement (internal link) provides guidance on the application of paragraph 21A of Appendix FM-SE, which sets out objective criteria by which you will assess the genuineness, credibility and reliability of other sources of income, financial support or funds.

Second, where an application for entry clearance or limited leave to remain under Appendix FM does not otherwise meet the requirements of that Appendix or Part Suitability of the rules:

Then, under paragraphs GEN.3.2. and GEN.3.3. of Appendix FM, you must consider whether there are exceptional circumstances which would render refusal of the application a breach of ECHR Article 8 because it would result in unjustifiably harsh consequences for the applicant or their family. In conducting this assessment, you must have regard to all of the information and evidence provided by the applicant. You must take into account, as a primary consideration, the best interests of any relevant child.

To reflect the findings in the Court of Appeal case of Secretary of State for the Home Department v AB (Jamaica) & Anor [2019] EWCA Civ 661, where the relevant child is a qualifying child (a British child or a child who has been continuously resident in the UK for at least 7-years), it will be unjustifiably harsh to refuse if both of the following apply:

- there is a genuine and subsisting parental relationship to the qualifying child
- it is unreasonable for the child to leave the UK

Where, under paragraph GEN.3.2. of Appendix FM, you consider that refusal would result in unjustifiably harsh consequences for the applicant or their family, you must grant entry clearance or limited leave to remain, unless D.ECP.1.2A., D-LTRP.1.2A., D-ECPT.1.2A, D-LTRPT.1.2A., D-ECC.1.1A and D-LTRC.1.1A. apply (For how to deal with these cases see 'Suitability Requirements').

Definitions

'**Exceptional circumstances'** means circumstances which could or would render refusal of entry clearance or limited leave to remain a breach of ECHR Article 8 (the right to respect for private and family life), because refusal could or would result in unjustifiably harsh consequences for the applicant, their partner or a relevant child, or would result in unjustifiably harsh consequences for another family member whose Article 8 rights it is evident from the application would be affected by a refusal.

'Exceptional' does not mean 'unusual' or 'unique'. Whilst all cases are to some extent unique, those unique factors do not generally render them exceptional. For example, a case is not exceptional just because the criteria set out in the Immigration Rules have been missed by a small margin.

Instead, 'exceptional' means circumstances in which refusal of the application could or would result in unjustifiably harsh consequences for the individual or their family such that refusal would not be proportionate under Article 8.

'Unjustifiably harsh consequences' are ones which involve a harsh outcome or outcomes for the applicant or their family which is not justified by the public interest, including in maintaining effective immigration controls, preventing burdens on the taxpayer, promoting integration and protecting the public and the rights and freedoms of others.

This involves consideration of whether refusal would be proportionate, taking into account all the facts of the case and, as a primary consideration, the best interests of any relevant child. The case-law makes clear that where the applicant does not meet the requirements of the rules, and has established their family life in 'precarious' circumstances (for example, when they have limited leave to enter or remain in the UK), something 'very compelling' is required to outweigh the public interest in refusal. Likewise, where family life is formed or exists with a person outside the UK who has no right to enter the UK and does not meet the requirements of the rules for entry clearance, Article 8 does not require that they be granted entry, in the absence of such exceptional circumstances.

A ‘**relevant child**’ means a person who:

- is under the age of 18 years at the date of application
- it is evident from the information provided by the applicant would be affected by a decision to refuse the application

‘Exceptional circumstances’ and ‘unjustifiably harsh consequences’

Applicants for entry clearance or limited leave to remain as a partner under the 5-year route are generally required to demonstrate that they meet the minimum income requirement under Appendix FM with reference to the specified forms and evidence of income or cash savings under Appendix FM-SE (excluding paragraph 21A). The level of the minimum income requirement set, and the general requirement to demonstrate compliance with it in accordance with Appendix FM-SE (excluding paragraph 21A), was upheld by the Supreme Court in MM (Lebanon).

However, in some cases, applicants will be permitted to demonstrate that they meet the minimum income requirement with reference to other credible and reliable sources of income, financial support or funds.

Paragraph GEN.3.1. of Appendix FM sets out the threshold test to be met before it is necessary for you to consider such other sources. You will ask whether the refusal of the application could breach ECHR Article 8, because it **could result in unjustifiably harsh consequences** for the applicant, their partner or a relevant child (taking into account, as a primary consideration, the best interests of that child).

This is a high threshold. After all, it is only in exceptional circumstances that Article 8 requires entry to or leave to remain in the UK to be granted when a person does not otherwise meet the requirements of the Immigration Rules.

However, the threshold to be met before it is necessary to consider other credible and reliable sources of income, financial support or funds under the minimum income requirement is not as high as the ultimate test, under paragraph GEN.3.2. of Appendix FM, of whether refusal of the application would be disproportionate under Article 8 because it **would result in unjustifiably harsh consequences** for the applicant or their family, taking account, as a primary consideration, of the best interests of any relevant child. Where this test is met, entry clearance or leave to remain has to be granted in any event, regardless of whether the minimum income requirement (or indeed any other requirement of the rules) is met.

The Immigration Rules in Appendix FM and Part Suitability reflect the weight to be given to the Article 8 ‘public interest considerations’, as expressed by Parliament in primary legislation (in Part 5A of the Nationality, Immigration and Asylum Act 2002). These include, in particular, the public interest in maintaining effective immigration controls, in preventing burdens on the taxpayer and promoting integration through migrants being financially independent and able to speak English, and in protecting the public and the rights and freedoms of others.

The relevant rules therefore reflect the position of the Secretary of State, approved by Parliament, as to proportionality under Article 8 in cases decided under Appendix FM. In so doing, they provide the basis for a clear, consistent and transparent decision-making process. This means that a decision made in accordance with those rules – including following consideration under paragraph GEN.3.1. or GEN.3.2. of Appendix FM, where relevant – should be proportionate under ECHR Article 8.

You must consider all the circumstances relating to the applicant and their family, based on the information and evidence provided by the applicant.

In the entry clearance context, a key question in the assessment, taking into account as a primary consideration the best interests of any relevant child, will be: why can't the UK partner go or remain overseas to continue or maintain their family life with the applicant? Alternatively, is it proportionate to expect the family to separate or for existing separation to be maintained?

If that approach:

- **could** result in unjustifiably harsh consequences for the applicant, their partner or a relevant child – taking account of the particular circumstances of the case, the best interests of any relevant child as a primary consideration, and the due weight to be given to the public interest – then, where the minimum income requirement is not otherwise met, the applicant must be given an opportunity to show whether the minimum income requirement can be met through any other credible and reliable source or sources of income, financial support or funds available to the couple
- **would** result in unjustifiably harsh consequences for the applicant or their family – taking account of the particular circumstances of the case, the best interests of any relevant child as a primary consideration and the due weight to be given to the public interest – then entry clearance or limited leave to remain must be granted on Article 8 grounds, where the requirements of the relevant Immigration Rules are not otherwise met

Exceptional circumstances on the basis of Article 8 can only be established where Article 8 is engaged. Article 8 is not usually engaged where the relationship relied upon is one between adult family members (other than partners), such as parents and their adult children, or adult siblings; or between wider family members, such as grandparents and grandchildren or aunts / uncles and nephews / nieces. There may be exceptions to this general rule in cases of unusual or exceptional dependency.

Relevant factors

The particular circumstances of each case must be considered in the light of all the information and evidence provided by the applicant. In determining whether there are exceptional circumstances which mean that refusal of the application could or would result in unjustifiably harsh consequences, you must consider all relevant factors raised by the applicant into account. In so doing, the best interests of any relevant child must be a primary consideration.

Relevant factors include:

The best interests of a relevant child.

Ability to lawfully remain in or enter another country. In respect of an entry clearance application, you should consider the ability of the members of the family unit (both the applicant and others) to lawfully remain in or enter another country. The onus is on the applicant to show that it is not feasible for the family to remain in or enter another country. A mere wish, desire or preference to live in the UK is not sufficient. An example of where it might not be feasible for the family to live together elsewhere might be where the sponsor has gained their settled status in the UK through a protection route, and the applicant is of the same nationality. In the absence of a realistic third country alternative, the settled person's inability to resume life in the country of origin is likely to constitute an obstacle to family life continuing or resuming overseas. In turn, that may mean that refusal of entry clearance will result in unjustifiably harsh consequences. You may consider relevant country information (but may not seek to go behind any decision to grant protection status).

The nature and extent of the family relationships involved, including such matters as:

- the evidence that the couple have a genuine family life together, including the length of the cohabitation of partners who are not married or in a civil partnership
- if the relationship is between adult family members or wider family members, evidence of an unusual or exceptional level of dependency such that Article 8 is engaged
- how frequently the applicant currently has direct contact with their child if they do not live with them
- any evidence that the applicant has sole parental responsibility for a child of a previous relationship who lives with them, or that the other parent of that child has consented to the child's relocation to the UK with the applicant and that this is in the child's best interests

Where relevant, the circumstances giving rise to the applicant being separated from their partner and / or child in the UK, such as:

- whether the family have previously lived together overseas
- any reasons why that situation could not continue or now resume
- whether the couple chose to commence their family life together whilst living in separate countries, or while one of them was temporarily in another country, therefore knowing that they would have to meet the immigration requirements of one country or another in order to live together
- whether a clear pattern of life has been entered into by the couple – of maintaining a separate lifestyle in 2 countries – which has become undesirable, rather than unjustifiably harsh (perhaps solely through a change in economic circumstances)
- whether there are any reasons why the partner and / or child in the UK cannot join or rejoin the applicant overseas - would it be unjustifiably harsh for them to

do so? Would it be unjustifiably harsh to expect the family to continue to live apart?

You will note that the fact that refusal may, for example, result in the continued separation of family members does not of itself constitute exceptional circumstances or unjustifiably harsh consequences, particularly where the family have chosen to commence or continue their relationships in separate countries.

The likely impact on the applicant, their partner and / or child if the application is refused. The impact on each family member raised in the application must be considered, as well as on the family unit as a whole.

Serious cultural barriers to relocation overseas. This might be relevant in situations where a person would be so disadvantaged by the social, religious or cultural situation in a particular country that they could not be expected to live there. For example, a same sex couple or an inter-faith couple where the UK partner would face a real risk of prosecution, persecution or serious harm in the country of proposed relocation, as a result of their relationship or faith.

Such a barrier must be one which affects their fundamental rights, cannot reasonably be overcome and would present a very serious obstacle to family life being pursued in that country. You should consider the effect on the UK partner and the degree of difficulty that the family would face living in that country. You should consider the relevant country information and guidance when considering whether a family would face very serious hardship in a particular country.

In so doing, you should consider the situation in practice and not just what is provided for in law. So, the fact that a country has a law which criminalises same sex sexual acts would not be sufficient to show that a couple would face very significant hardship living together in that country if the authorities in practice do not prosecute cases and there is no real risk of prosecution or persecution. The inability of a couple to marry or enter into a civil union, or to have their existing marriage or civil union recognised, in the country in which they would be required to continue or resume living is not in itself an obstacle to family life continuing or resuming overseas.

Circumstances where the sponsor is British or settled and the family have chosen to be separated, or are all living together overseas, differ in nature from circumstances where the sponsor has fled from the country of origin and been granted protection status in the UK. Where family members are applying to join or remain with a sponsor with protection status in the UK you should consider whether the sponsor is able to live safely in the country or countries where the family could lawfully reside. Where the only country the family could lawfully reside in is the country the sponsor fled from, particular care should be taken. In these circumstances, you should generally accept that the sponsor would face very serious hardship in that country unless there is evidence that the sponsor has returned there since being granted protection status, or there has been a significant change in country circumstances. All cases should be considered on a case by case basis. You should consider the relevant country information in relation to the country or countries in which the applicant and their family could lawfully reside. See also: Revocation of the Sponsor's protection status.

The impact of a mental or physical disability or of a serious illness which requires ongoing medical treatment. Living in or moving to another country may involve a period of hardship for any person as they adjust to their new surroundings, whether or not they have a mental or physical disability or a serious illness which requires ongoing medical treatment. But independent medical evidence could establish that a physical or mental disability, or a serious illness which requires ongoing medical treatment, would lead to very serious hardship: for example, due to the lack of adequate health care in the country where the family would be required to continue or resume living. As such, in the absence of a third country alternative, it could amount to an obstacle to family life continuing or resuming overseas, such that refusal of entry clearance would result in unjustifiably harsh consequences.

The absence of governance or security in another country. In some circumstances, for example where civil society has broken down as a result of conflict or natural disaster (and such breakdown extends to the country as a whole), requiring family members to either continue or to commence living there may give rise to very serious hardship that renders refusal unjustifiably harsh. Foreign Office travel advice should not normally be referred to, as that is generally aimed at tourists choosing to visit a country for specific purposes and a limited period. Rather, you should consider the relevant country information and guidance in relation to the country or countries in which the applicant and their family do or could lawfully reside.

The immigration status of the applicant or applicants. You should take into account the circumstances around each individual applicant's entry to and stay in the UK and the proportion of the time they have been in the UK legally as opposed to illegally. Did they establish their right to an Article 8 consideration at a time when they were in the UK unlawfully? Article 8 rights formed in the knowledge that a person's stay here is unlawful should be given less weight (when weighed against the public interest in their removal) rights formed by a person lawfully present in the UK. Is the applicant in the UK as a visitor, meaning that they have undertaken to leave the UK at the end of their visit as a condition of their visit visa or leave to enter?

Suitability. You should take into account any failure of mandatory or discretionary suitability requirements when determining whether refusal is unjustifiably harsh. Where a person fails SUI 2.1., SUI 2.3., SUI 3.1., SUI 4.1., or SUI 5.1. of Part Suitability they must be refused under Appendix FM.

Cumulative factors should be considered. Cumulative factors weighing in favour of the applicant should be balanced against cumulative factors weighing in the public interest in deciding whether refusal would be unjustifiably harsh for the applicant or a relevant family member.

You must have regard to the individual circumstances of the applicant, their partner and any relevant child, based on all the information and evidence which has been provided.

Where the applicant's partner is in the UK, the question of whether refusal of entry clearance could or would result in unjustifiably harsh consequences equally requires a very stringent assessment. For example, a British citizen partner who has lived in the UK all their life, has friends and family here, works here and speaks only English may not wish to uproot and relocate halfway across the world, and it may be very difficult for them to do so. However, a significant degree of hardship or inconvenience does not amount to an unjustifiably harsh consequence in this context. ECHR Article 8 does not oblige the UK to accept the choice of a couple as to which country they would prefer to reside in.

The assessment of whether family life can continue or resume overseas will generally be considered with reference to the country in which the applicant is resident (or of which they are a national), unless there is information to suggest that the applicant or their partner might have a choice about where they choose to live overseas, such as where one or both of them has a right to reside in a country other than the country in which the applicant is resident, or where one or both of them has more than one nationality. In that case you should consider whether there are obstacles to family life continuing or resuming in any of the relevant countries (such that refusal is likely to result in unjustifiably harsh consequences).

Examples of circumstances in which 'unjustifiably harsh consequences' are not likely to arise include:

Lack of knowledge of a language spoken in the country in which the family would be required to continue or resume living. It is reasonable to assume that the family have a language in which they can communicate together. Therefore, it is possible for family life to continue or resume outside the UK, whether or not the partner chooses to also learn a language spoken in the country in which the family would be required to continue or resume living. Although inability to speak the language of that country may cause difficulties for the partner, it is very unlikely to amount to unjustifiably harsh consequences: many people successfully move to a country where, at first, they do not speak the language.

Being separated from extended family members, such as where the parents or siblings of the applicant or their partner live in the UK, unless there are particular factors in the case to establish the unusual or exceptional dependency required for Article 8 to be engaged.

A material change in the quality of life for the family in the country in which they would be required to continue or resume living, such as the type of accommodation they would live in, or a reduction in their income or standard of living, unless this would lead to particular hardship or there were particular exceptional factors in the case.

Examples of circumstances in which the refusal of the application might result in 'unjustifiably harsh consequences' might include:

The applicant and their partner have a child in the UK with serious mental health or learning difficulties, and independent medical evidence establishes that

good treatment and learning support are in place for the child here which would not be available in the country where the applicant resides.

The applicant's partner has a genuine and subsisting parental relationship with a child in the UK of a former relationship, is taking an active role in the child's upbringing, and the particular circumstances of the case mean that (taking into account the child's best interests as a primary consideration) it would be unjustifiably harsh to expect the child to relocate overseas with the applicant's partner, or for the applicant's partner to do so without the child.

The best interests of a relevant child

Where making any decision which may affect the welfare of a child, but in particular where considering:

- under paragraph GEN.3.1. of Appendix FM, whether refusal of an application for entry clearance or leave to remain as a partner or child which does not meet the minimum income requirement could result in unjustifiably harsh consequences for the applicant, their partner or a relevant child
- under paragraph GEN.3.2. of Appendix FM, whether refusal of an application for entry clearance or leave to remain under Appendix FM – which does not otherwise meet the requirements of that Appendix or Part Suitability (general grounds for refusal) – would result in unjustifiably harsh consequences for the applicant or their family

You must take into account, as a primary consideration, the best interests of any 'relevant child'.

A 'relevant child' is a child in the UK or overseas, who is under the age of 18 years at the date of application, and who it is evident from the information provided by the applicant would be affected by a decision to refuse the application.

The changes to the Immigration Rules in HC 290 and their specific references to the best interests of children do not change the substance of the consideration which section 55 of the 2009 Act has always required (and continues to require). However, together with this guidance, those provisions seek to underline that existing obligation.

The Supreme Court determined, in ZH (Tanzania) v Secretary of State for the Home Department [2011] UKSC 4, that the 'best interests of the child' broadly means their well-being and that in undertaking a proportionality assessment under Article 8 those best interests must be a primary consideration. However, they are not necessarily determinative, and they can be outweighed by public interest considerations. The Court also noted that while British citizenship is not a 'trump card', it is of particular importance in assessing the best interests of a child.

In FZ (Congo) v Secretary of State for the Home Department [2013] UKSC 74, the Supreme Court said:

"...The best interests of a child are an integral part of the proportionality assessment under Article 8 of the Convention; in making that assessment, the best interests of a child must be a primary consideration, although not always the only primary consideration; and the child's best interests do not of themselves have the status of paramount consideration..."

How to consider the best interests of a relevant child

In considering the best interests of a relevant child as a primary consideration within the Article 8 decision-making process, what matters is the substance of the attention given to the overall well-being of the child. That must be given distinct consideration, not simply regarded as an adjunct of the family life of their parent or parents.

It is also essential that the child is not blamed for any failure by their parent or parents to comply with UK immigration controls. The conduct or immigration history of their non-British citizen parent or parents is relevant to the public interest analysis and must be given due weight in determining the overall proportionality of the decision under ECHR Article 8, but it does not affect the assessment of the child's best interests or the need for those best interests to be taken into account as a primary consideration in the Article 8 decision.

The assessment of a child's best interests requires a consideration of all relevant factors in the particular case.

In respect of leave to remain applications, where both parents are expected to leave the UK because their applications do not meet the requirements of the rules, there is a normal expectation that the child would go with them unless there is evidence that means it would be more than unreasonable, which would make the impact of refusal of their parents' applications on the child unjustifiably harsh.

The following is a non-exhaustive list of factors which are likely to be relevant. However, other factors may also be relevant in individual cases.

Factors relevant to the consideration of a child's best interests will include:

- whether their parent or parents is (are) expected to remain outside or to leave the UK
- the age of the child at the date of application
- the child's nationality, with particular importance to be accorded to British citizenship where the child has this
- the child's current country of residence and length of residence there
- the family circumstances in which the child is living
- the physical circumstances in which the child is living
- the child's relationships with their parent or parents overseas and in the UK
- how long the child has been in education and what stage their education has reached
- the child's health

- the child's connection with the country outside the UK in which their parents are, or one of their parents is, currently living or where the child is likely to live if their parents leave the UK
- the extent to which the decision will interfere with, or impact on the child's family or private life

Where the child is resident overseas, additional relevant factors will include:

- the reasons for the child being overseas
- where the child is a child of a previous relationship of the applicant or their partner: whether it has been shown that the applicant or their partner has sole parental responsibility for the child, or that the child's other parent has consented to the child's relocation to the UK and that this is in the child's best interests
- whether the child has siblings under the age of 18 overseas or in the UK, and their age and nationality
- whether the child or those siblings were born in the UK
- whether the child has previously visited or lived in the UK

Where the child is resident in the UK, additional relevant factors will include:

- how renewable the child's connection is with the country outside the UK in which their parents are, or one of their parents is, currently living
- whether (and, if so, to what extent) the child will have linguistic, medical or other difficulties in adapting to life in that country
- whether there are any factors affecting the child's well-being which can only be alleviated by the presence of the applicant in the UK
- what effective and material contribution the applicant's presence in the UK would make to safeguarding and promoting the child's well-being. Is this significant in nature? for example:
    - support during or following a major medical procedure, especially if this is likely to lead to a permanent change in the child's life
    - where there is no other family member in the UK able to care for the child and the applicant's presence in the UK will form part of achieving a durable solution for the child that is in their best interests

Support for the child in the UK during exams is unlikely to be sufficient, unless there are additional factors in the child's circumstances requiring a clear contribution and support from the applicant and any plans of the other family member or members in the UK that were in place to provide this cannot now be met

The child's best interests, taken into account as a primary consideration, must constitute substantive and compelling factors for entry clearance to be granted following consideration under paragraphs GEN.3.2. and GEN.3.3. of Appendix FM, where the requirements of the Immigration Rules are not otherwise met.

You must take into account any order made by the Family Court in the UK, but this is not determinative of the immigration decision. Family orders, such as contact, care, ward of the court and residence orders, do not limit the exercise of the Secretary of

State's powers with respect to immigration control. You do not have to grant leave because of such an order, but any order of this type is a relevant and important consideration to take into account in assessing the best interests of the child. Orders from the Family Court must be accompanied by written permission of disclosure from the Family Court.

To reflect the findings in the Court of Appeal case of Secretary of State for the Home Department v AB (Jamaica) & Anor [2019] EWCA Civ 661, where the requirements of the rules are otherwise not met (in part or at all), there is a genuine and subsisting parental relationship to a qualifying child and if there is and it is unreasonable for that child to leave the UK, the exceptional circumstances test will be met.

Related content
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Decision to grant leave to remain on the basis of exceptional circumstances under GEN.3.2. of Appendix FM

Where an application made or considered under Appendix FM does not otherwise meet the relevant requirements of that Appendix or of Part Suitability, but it is considered, under paragraph GEN.3.2., that there are exceptional circumstance which would render refusal a breach of European Convention on Human Rights (ECHR) Article 8 (because it 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 the information provided by the applicant would be affected), leave to remain should be granted in accordance with paragraph GEN.3.2. under the most relevant decision paragraph under Appendix FM, unless D.ECP.1.2A., D-LTRP.1.2A., D-ECPT.1.2A, D-LTRPT.1.2A., D-ECC.1.1A and D-LTRC.1.1A. apply. The applicant will normally be granted leave to remain for a period of 30 months, (See: Shorter periods of permission) with scope to qualify for settlement as a partner or parent (or as their child) after 10 years.

In all cases where you are granting permission to stay in accordance with GEN.3.2. on the 10-year route to settlement, you must consider whether to grant permission with access to public funds.

You must grant access to public funds where the applicant has provided satisfactory evidence that:

- they are destitute or at risk of imminent destitution
- there are reasons relating to the welfare of a relevant child which outweigh any reasons for not allowing access
- they are facing exceptional financial circumstances relating to their income or expenditure

You may need to make further enquiries to establish whether the above criteria have been met.

When deciding whether to allow access to public funds, the best interests of a relevant child must be treated as a primary consideration.

A ‘relevant child’ means a person who both:

- is under the age of 18 years at the date of application
- it is clear from the information provided by the applicant, is a child who would be affected by a decision to impose or maintain the no recourse to public funds condition

Where the above criteria have not been met, you must not grant access to public funds.

Where a child is being granted entry clearance or permission to stay under paragraphs D-ECC.1.1. or D-LTRC.1.1. in-line with their parent, they must be subject to the same conditions in respect of access to public funds as their parent who is being, or has been, granted under Appendix FM.

For detailed guidance on assessing when to grant access to public funds see: Access to public funds – family, private life and Hong Kong BN(O) routes (internal link).

The applicant should be advised that, where eligible, they should make an appropriate valid application for further leave to remain no more than 28 days before their extant leave is due to expire, or no more than 28 days before they have completed 30 months in the UK with such leave.

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Shorter or longer periods of permission

Shorter periods of permission

Where the sponsor holds protection status, when that status was granted for a period of 30 months following an asylum application made on or after 2 March 2026, permission granted to a partner under Appendix FM should normally be aligned with the duration of the sponsor's permission. This will mean that main applicant's leave expires on the same date as the sponsor's leave. Any departure from this position should only be considered where there are clearly evidenced, case specific reasons to grant leave outside the rules for a different period.

In some cases, there may be exceptional circumstances that mean it may be appropriate to grant permission to stay in the UK on a short-term temporary basis to enable particular issues relating to a person to be addressed before they leave the UK. For example, a short period of stay to enable them to complete exams which are critical to a defined stage of education or to enable a specific treatment to be completed in order to enable a person to travel. If the grant of permission to stay is being made on a short-term temporary basis, a shorter period of permission should be granted, appropriate to the circumstances of the case.

Longer grants of permission

Settlement (also known as 'Indefinite Leave to Remain' – ILR) in the UK is a privilege, not an automatic entitlement. Unless there are truly exceptional reasons, the expectation is that applicants should serve a qualifying period of limited permission before being eligible to apply for settlement and should make a valid application for settlement in order to be considered.

However, there may be rare cases in which either a longer period of leave or a grant of settlement outside the rules is considered appropriate because there are other particularly exceptional or compelling reasons to do so. There is discretion to grant a longer period of permission or settlement outside the rules on this basis.

There must be sufficient evidence to demonstrate the individual circumstances are not just unusual but can be distinguished to a high degree from other cases to the extent that it is necessary to deviate from a standard grant of 30 months' permission to stay under Appendix FM. The absence of a fee waiver for a settlement application is not, on its own, a sufficient reason for granting settlement outside the rules. The expectation is that a valid application for settlement should be made.

Reasons to grant settlement outside the rules are likely to be easily identifiable on their individual facts, for example, where it is considered that the precariousness of limited permission would create such serious distress as to have a disproportionately detrimental effect on the person's health or welfare that it would prevent recovery or development. The threshold is high and concerns the direct effect on the person concerned.

An example of where it would not normally be appropriate to grant settlement might be because the person would like to qualify for a student loan to go to university and isn't currently eligible. This would not normally be regarded as sufficiently exceptional or compelling circumstances, absent additional factors.

Where granting a non-standard period of permission to the applicant, because it is accepted that there are exceptional reasons for doing so, this permission will have to be granted outside the Immigration Rules as there is no provision within Appendix FM for granting permission for a period of more than 30 months. This also applies to settlement, where this is granted outside of a valid settlement application or where the requirements of the rules are not met. If there are exceptional reasons to grant settlement, this should be granted outside the rules.

In all cases the onus is on the applicant to provide evidence as to why they believe that a longer period of permission (or settlement) is necessary and justified on the basis of particularly exceptional or compelling reasons.

If you decide that the case is not sufficiently exceptional or compelling, you should grant 30 months permission to stay and must fully explain in the decision letter why this has been granted instead of the length of permission requested.

If the applicant does not make a request for a longer than standard period of permission, or if they make a request without providing any reasons for why a longer grant of permission is appropriate, you should grant 30 months permission to stay.

Where the applicant is a child, or where a child may be affected by the decision on whether to grant a longer period of leave (or settlement), that child's best interests must be given primary consideration in accordance with the duty under section 55 of the Borders, Citizenship and Immigration Act 2009.

You must first consider whether it would be in the child's best interest to grant a longer period of permission (or settlement). Where the applicant is not a child, this will involve considering whether a child will be affected by the decision regarding the period of permission to be granted.

Where you determine it would be in a child's best interests to grant a longer period of permission (or settlement), you must go on to consider whether there are other considerations that outweigh the child's best interest, treating that interest as a primary (but not the only) consideration. The general requirements for applicants to complete a qualifying period of limited permission before being eligible to apply for settlement, and to make a valid application for settlement in order to be considered (including payment of the fee), are relevant considerations in this regard.

Where you decide not to grant a longer period of permission (or settlement) in a case involving a child, you must fully explain in the decision letter how you have assessed the child's best interests in accordance with the section 55 duty.

For further information see: Applications in respect of children.

Related content

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Compelling compassionate factors

This section tells you about compassionate factors.

Where circumstances do not warrant a grant of leave on the basis of Article 8, you must consider if a grant of leave outside the rules is warranted on compelling compassionate grounds.

Compelling compassionate factors are, broadly speaking, exceptional circumstances that warrant a period of leave for a non-Article 8 reason. An example might be where an applicant or family member has suffered a bereavement and requests a period of stay to deal with their loss or to make funeral arrangements.

In considering compassionate factors, you must consider all relevant factors raised by the applicant.

If any compassionate factors are raised in the application, you should consult the following leave outside the rules guidance:

- Leave outside the rules (LOTR) (internal)
- Leave outside the rules (LOTR) (external)

You should ensure that where an applicant is granted limited leave to remain on the basis of compassionate factors, the decision letter must clearly show that the grant has been given outside the Immigration Rules on the basis of compassionate factors and is not being made on the basis of their Article 8 family or private life.

It is unlikely that leave will be granted for a period of 30 months but instead should be a short period of leave to remain to reflect the individual circumstances of the application. For example, it may be appropriate to grant a period of 6 months' leave to enable completion of final examinations taking place within 4 months, to allow for the examinations and to arrange travel.

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Decisions in cases where a valid application is not required

This section tells you how to consider cases where a valid application is not required.

When a valid application is not required

Under Appendix FM and Appendix Private Life a valid application is not required when the Article 8 family or private life claim is raised:

- as part of an asylum claim, or as part of a further submission in person after an asylum claim has been refused
- where a migrant is in immigration detention- a migrant in immigration detention or their representative must submit any application or claim raising Article 8 to a prison officer, a prisoner custody officer, a detainee custody officer or a member of Home Office staff at the migrant's place of detention
- in an appeal (subject to the consent of the Secretary of State where applicable)
- by those in the Family Returns Process

Where a valid application is not required, as set out above and in paragraph GEN.1.9. of Appendix FM and paragraph A277C of Part 8 of the Immigration Rules, you should consider the Article 8 claim under the relevant requirements in Appendix FM when considering family life or Appendix Private Life when considering private life.

A person who has made a claim or wishes to make a claim for leave on the basis of Article 8 and who is not required to make a valid application can only be considered for leave to remain under the 10-year partner, parent or private life route to settlement.

If the person wishes to be considered under the 5-year partner or parent route, they must submit a valid application.

Where an applicant has been granted leave to remain on the basis of Article 8 (under Appendix FM, Appendix Private Life, or before 20 June 2022) without submitting a valid application, they will be required to submit a valid application, on the correct form and accompanied by the correct fee (subject to any fee waiver they may qualify for), when they come to apply for further leave to remain or indefinite leave to remain (unless they once again fall within paragraph GEN.1.9. or the Secretary of State otherwise decides to determine any Article 8 claim in the absence of such an application).

Asylum / Humanitarian Protection or removal decisions

Asylum / Humanitarian Protection claims

Where a person has made a claim for asylum or humanitarian protection, the Immigration Rules in paragraphs A277C of Part 8 and 326B of Part 11, and paragraph GEN.1.9. of Appendix FM, provide that any Article 8 claim will be considered in line with the 10-year partner or parent routes in Appendix FM and the private life routes in Appendix Private Life (or paragraphs 276ADE(1) to 276DH of the Immigration Rules before 20 June 2022), or the private life route under Appendix Private Life.

The asylum decision maker should consult the relevant policy instruction for guidance on the asylum/humanitarian protection part of the decision-making process.

Article 8 claims made while in immigration detention pending removal

Paragraphs PL 1.3. of Appendix Private Life and GEN.1.9 of Appendix FM set out that where an applicant is in immigration detention, they or their representative must submit any application or claim raising Article 8 to a prison officer, a prisoner custody officer, a detainee custody officer, or a member of Home Office staff at their place of detention. The claim should be considered under the relevant 10- year partner or parent routes in Appendix FM and the private life route in Appendix Private Life. Where applicants fail SUI 2.1., SUI 2.3., SUI 3.1., SUI 4.1. or SUI.5.1 of Part Suitability you must refer the case to the Foreign National Offender (FNO) Returns Command for them to consider whether to pursue deportation or refer to restricted leave by email to Special Cases General Enquiries and to Criminality Policy.

Considering Article 8 claims in Asylum / Humanitarian Protection and removal decisions

The decision maker dealing with asylum / humanitarian protection or removal cases should deal with the Article 8 part of any claim by considering whether the applicant meets the requirements of the 10-year partner route under paragraph R-LTRP.1.1(a), (b) and (d), or the 10-year parent route under paragraph R-LTRPT.1.1(a), (b) and (d) of Appendix FM, and the private life route under Appendix Private Life.

Where the requirements are met, you may grant leave to remain for a period of up to 30 months, under the relevant route, (see: Shorter periods of permission). You must also consider whether to allow access to public funds.

You must grant access to public funds where the applicant has provided satisfactory evidence that:

- they are destitute or at risk of imminent destitution

- there are reasons relating to the welfare of a relevant child which outweigh any reasons for not allowing access
- they are facing exceptional financial circumstances relating to their income or expenditure

You may need to make further enquiries to establish whether the above criteria have been met.

When deciding whether to allow access to public funds, the best interests of a relevant child must be treated as a primary consideration.

A 'relevant child' means a person who both:

- is under the age of 18 years at the date of application
- it is clear from the information provided by the applicant, is a child who would be affected by a decision to impose or maintain the no recourse to public funds condition

Where the above criteria have not been met, you must not grant access to public funds.

Where a child is being granted entry clearance or permission to stay under paragraphs D-ECC.1.1. or D-LTRC.1.1. in-line with their parent, they must be subject to the same conditions in respect of access to public funds as their parent who is being, or has been, granted under Appendix FM.

For detailed guidance on assessing when to grant access to public funds see: Access to public funds – family, private life and Hong Kong BN(O) routes (internal link).

This consideration can only result in leave to remain granted under a 10-year route to settlement if the applicant meets the requirements of the relevant rules. If the applicant wishes to be considered for leave to remain under the 5-year route as a partner or parent, they will have to submit a separate, valid application for that route.

If the requirements for a grant of leave on the basis of family life (including on the basis of exceptional circumstances) are not met on a 10-year route under Appendix FM or Appendix Private Life are not met, you must go on to consider whether there are any exceptional circumstances which would mean that refusal would result in unjustifiably harsh consequences for the individual such that refusal of the application would not be proportionate.

For guidance on exceptional circumstances and how to consider a child's best interests, see the Exceptional circumstances section.

If there are exceptional circumstances, the applicant should be granted leave to remain in line with the following section of this guidance: Exceptional circumstances.

If the Article 8 claim is refused, you should refuse leave to remain family life under paragraph D-LTRP.1.3. or D-LTRPT.1.3. of Appendix FM and private life under paragraph PL 9.1. of Appendix Private Life.

If after considering the case the Article 8 claim is refused, any reasons for refusal letter must explain why the requirements of the Immigration Rules have not been met. It must fully outline and explain the consideration of exceptional circumstances, including why it is not considered there are any exceptional circumstances in the case.

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Appeals

Appeals against refusal under the family rules

You should refer to the rights of appeal guidance (internal link) for information on appeal rights.

Where a human rights appeal is allowed and the Tribunal have found that the requirements of the relevant rules are met you should grant the leave that the appellant qualified for under the Immigration Rules.

Where the Tribunal finds the relevant rules have not been met, but allows the human rights appeal on the basis of exceptional circumstances family life grounds, the appellant should be granted leave in accordance with paragraph GEN 3.2.(3) of Appendix FM for a period of up to 30 months.

In all cases where an appeal has been allowed and entry clearance or permission to stay is being granted as a parent or partner on the 10-year route to settlement under paragraph D-ECP.1.2., D-LTRP.1.2., D-ECPT.1.2. or D-LTRPT.1.2., you must consider whether to grant access to public funds.

You must grant access to public funds where the applicant has provided satisfactory evidence that:

- they are destitute or at risk of imminent destitution
- there are reasons relating to the welfare of a relevant child which outweigh any reasons for not allowing access
- they are facing exceptional financial circumstances relating to their income or expenditure

You may need to make further enquiries to establish whether the above criteria have been met.

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to the same conditions in respect of access to public funds as their parent who is being, or has been, granted under Appendix FM.

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Coronavirus (COVID-19) concessions

The following guidance and concessions were in place during the COVID-19 pandemic. These concessions are no longer in place, but this information is retained here as the information may be relevant for assessing applications for further permission to stay.

A commitment was made to ensure family and private life applicants were not unduly affected by reasons beyond their control due to COVID-19. The pandemic caused disruption to travel plans, which may have caused breaks in continuous lawful immigration status / residence requirements.

Due to the impact of COVID-19, some applicants seeking to extend or complete a route to settlement on the basis of family or private life, may be unable to meet the immigration status / continuous residence eligibility requirements of Appendix FM. This may have been due to travel restrictions, closure or inaccessibility of a visa application centre (VAC), or illness.

Ordinarily, there is no flexibility for you to exercise discretion in allowing lawful immigration status and continuous residence eligibility requirements to be met. However, you may exercise discretion to allow an applicant to stay on (extend – apply for further leave) or complete a route to settlement despite them having a short period without leave, where it is shown that they were not able to travel or apply due to COVID-19 between 1 March and 31 August 2020.

Any visitor whose period of leave expired after 31 August 2020 was still allowed to make their application from within the UK on a limited, case by case basis until 30 June 2021. We expected applicants to prove that their application was urgent at the time it was submitted or for them to provide a valid reason why they could not apply from outside the UK as a result of COVID-19 on that date. Visitors were no longer able to make in country applications after 30 June 2021.

If a person is in the UK with 6 months' leave as a fiancé, fiancée or proposed civil partner and their wedding or civil ceremony was delayed due to COVID-19 they may have been granted additional time to stay, also known as 'exceptional assurance', to complete their wedding or civil partnership. Any period of stay under exceptional assurance extended the same conditions as their original grant of leave. The exceptional assurance policy ended on 31 October 2021.

A person with 6 months' leave as a fiancé, fiancée or proposed civil partner was allowed to apply for an extension of leave if there was a good reason for their wedding or civil partnership not taking place during the initial 6 month period of leave to enter. Cancellation of a wedding or civil partnership ceremony due to COVID-19 was considered a good reason under that policy.

Decision makers were able to disregard a short period of time spent overseas (up to 6 months) between the period 1 March 2020 and 19 July 2021 where leave to enter or remain expired and an applicant could not return to the UK to renew their leave

due to COVID-19, provided an applicant extended their leave and / or made an application for leave to enter as soon as was practicable.

The break in continuous residence may have been caused by a number of reasons:

- the applicant was due to apply for leave to remain but was stranded outside the UK and couldn't apply for leave to enter because a VAC was closed or inaccessible
- the applicant returned to the UK as a visitor or following a visa waiver or carrier waiver in order to complete an application for further leave once back in the UK

In some cases, an applicant with leave, applying for further leave or ready to apply for settlement, may not have been able to travel back to the UK, but instead was able to access a VAC to apply for indefinite leave. Appendix FM would not ordinarily allow for a period of leave to enter or remain, followed by another period of leave to enter in order to be eligible to apply for settlement after 5-years. However, where the application was made in order to maintain a continuous period of lawful residence, you may take that period of leave to enter into account.

You may disregard a period of leave outside the Immigration Rules granted by Border Force to allow an applicant to re-enter the UK following a period of being stranded overseas due to COVID-19 when their leave expired between 1 March 2020 and 30 June 2021.

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