

Section Contents

**Chapter 8- Family Members
Section 2 – Civil Partners**

This guidance applies to:

- Applications made before 9 July 2012 which were not decided before that date
- Applications made by persons who were granted entry clearance or limited leave to remain under Part 8 of the Rules before 9 July 2012 and that leave is still extant where this is a requirement of Part 8
- Applications made by civil partners of full-time members of HM forces
- Applications made on or after 9 July 2012 by a civil partner who was given leave to enter for a period of up to 27 months because he or she did not meet the Knowledge of Life requirement and had not applied for ILR before that date.

Any other applications made after 9 July 2012 should be considered under the partner guidance:

[Appendix FM - Partner Guidance](#)

1. Introduction
2. Leave to enter as the civil partner of a person present and settled in the United Kingdom
 - 2.1 Interpretation of “present and settled”
 - 2.2 Interpretation of “intention to live permanently with the other”
 - 2.3 English language requirement
 - 2.4 Key points
 - 2.5 Further guidance

- 2.6 Granting leave to enter
- 2.7 Knowledge of Life (KOL)
- 2.8 Criminality
- 2.9 Statistical codes
- 2.10 Refusal of leave to enter
- 2.11 On entry refusal codes
- 2.12 Right of appeal and corresponding refusal form

3. Leave To Remain As A Civil Partner Of A Person Present And Settled In The United Kingdom

- 3.1 Key points
- 3.2 Making further enquiries
- 3.3 Interviews
- 3.4 Maintenance and Accommodation
- 3.5 English Language Requirement
- 3.6 Granting leave to remain
- 3.7 Statistical codes
- 3.8 Refusal of leave to remain
- 3.9 Curtailment of stay

3.10. Statistical codes

4. Settlement

4.1 Key points

4.2 Criminality

4.3 Applications for indefinite leave to remain at the end of the probationary period

4.4 Delayed travel on Entry Clearances conferring leave to enter

4.5 Interviews

4.6 Absences from UK during probationary period

4.7 Knowledge of Life (KOL)

4.8 Maintenance and accommodation

4.9 Same sex partners who have since formed a civil partnership

4.10 Granting settlement

4.11 Statistical codes

4.12 Refusal of settlement

4.13 Statistical codes

5. Bereaved civil partners

5.1 Criminality

6. Victims of domestic violence

7. Civil partners of members of HM Forces, permanent members of HM Diplomatic Service, comparable UK-based staff members of the British Council on a tour of duty overseas, or staff members of the Department For International Development who are British citizens or UK settled.

7.1 Granting leave to enter and settlement

7.2 Further guidance

7.3 Consideration of settlement applications

7.4 Further guidance

7.5 Refusing a settlement application

8. Other Cases

8.1 Granting a further 12 months

1. Introduction

The Civil Partnership Act 2004 came into force on 5 December 2005. Civil partnerships are a legal relationship which can be registered by two people of the same sex and give couples legal recognition of their relationship.

Same-sex couples who register a civil partnership will have parity of treatment in a wide range of legal matters with those opposite-sex couples who enter into a marriage.

The rights and responsibilities of civil partners include:

- A duty to provide reasonable maintenance for their civil partner and any children of the family;
- Ability to apply for parental responsibility for their civil partner's child;
- Equitable treatment for the purposes of assessment for child support; life assurance; tax, including inheritance tax; employment and pension benefits; inheritance of a tenancy agreement;
- Recognition under intestacy rules;
- Access to fatal accidents compensation;
- Protection from domestic violence; and
- Recognition for immigration and nationality purposes.

Under the Immigration Rules overseas nationals may seek leave to enter or remain in the United Kingdom with a view to settlement as the civil partner of a person present and settled here. Paragraphs 281-289 of HC 395 as amended by HC 582 set out the provisions for leave to enter or remain for persons in this category. Further guidance on the recognised terms for civil partnership can be found in **Annex H**.

Paragraph 277 of HC 395 states that nothing in the Rules shall be construed as permitting a person to be granted entry clearance, leave to enter, leave to remain or variation of leave as a civil partner if the applicant or the sponsor will be aged under 18 on the date of arrival in the United Kingdom or (as the case may be) on the date on which the leave to remain or variation of leave would be granted.

1.1. Application of this instruction in respect of children and those with children

Section 55 of the Borders, Citizenship and Immigration Act 2009 requires the UK Border Agency to carry out its existing functions

in a way that takes into account the need to safeguard and promote the welfare of children in the UK. It does not impose any new functions, or override existing functions.

Officers must not apply the actions set out in this instruction either to children or to those with children without having due regard to section 55. The UK Border Agency instruction 'Arrangements to Safeguard and Promote Children's Welfare in the United Kingdom Border Agency' sets out the key principles to take into account in all Agency activities.

2. Leave To Enter As A Civil Partner Of A Person Present And Settled In The United Kingdom

The requirements to be met by a person seeking leave to enter as a civil partner of a person present and settled in the United Kingdom or being admitted on the same occasion for settlement are set out in paragraph 281 of HC395 and **must** be referred to when reading the following advice.

From 9 July 2012, applicants joining this route must meet the new family rules in Appendix FM of the Immigration Rules. Please refer to Chapter 8, Appendix FM Annex FM1.0 for further guidance.

2.1 Interpretation of "present and settled"

"Present and settled" means that the person concerned is settled in the United Kingdom and, at the time an application under these Rules is made, is physically present here or is coming here with or to join the applicant and intends to make the United Kingdom their home with the applicant if the application is successful. Paragraph 7 below sets out the special provisions for members of HM Forces, permanent members of HM Diplomatic Service, comparable UK based staff members of the British Council on a tour of duty overseas, or staff members of the Department for International Development who are British citizens or UK settled.

2.2 Interpretation of "intention to live permanently with the other"

"Intention to live permanently with the other" means an intention to live together, evidenced by a clear commitment from both parties that they will live together permanently in the United Kingdom immediately following the outcome of the application in question or as soon as circumstances permit thereafter, and "intends to live permanently with the other" shall be construed accordingly.

2.3 English language requirement

With effect from 29 November 2010, the Immigration Rules were amended to bring in an English language requirement for those people applying for entry clearance, leave to enter or leave to remain in the UK as spouse, civil partner, fiancé(e), proposed civil partner, unmarried partner or same-sex partner of a British citizen or a person settled in the UK.

An applicant can meet the requirement in one of the following ways:

- by passing an acceptable test at a minimum level A1 of the Common European Framework of Reference for Languages (CEFR) with an approved provider, or
- by being a national of a majority English speaking country, or
- by having an academic qualification equivalent to a Bachelor's or Master's degree or PhD in the UK, which was taught in English.

If the applicant does not meet the requirement in one of the ways listed above, they may qualify for an exemption from the requirement to provide a test certificate if:

- they are aged 65 or over, or
- they have a disability (physical or mental condition) which prevents them from meeting the requirement, or
- there are exceptional compassionate circumstances which prevent them from meeting the requirement.

Please see Annex A3 "English Language Requirement" for further guidance.

2.4 Key points

The main points on which the immigration officer needs to be satisfied are that:

- the passenger holds a valid entry clearance endorsed "Accompanying / to join partner" or "settlement / to join [partners surname and first initial]"; and
- there is no reason to believe that false representations were made in order to obtain the entry clearance or that circumstances have changed since its issue.

2.5 Further guidance

Most passengers seeking entry in this category will be in possession of an entry clearance on arrival and detailed examination is unlikely to be necessary before leave to enter is granted. However, where a passenger does arrive without a valid entry clearance for this purpose it will be necessary to establish whether there are any compelling

compassionate circumstances, which would prevent refusal and removal.

Annex A provides guidance relating to doubtful cases.

2.6 Granting leave to enter

All passengers who have an entry clearance endorsed "Accompanying / to join partner" or "settlement / to join [partners surname and first initial], " should be granted leave to enter for 27 months on Code 1 and advised that, provided the civil partnership is still subsisting, they should apply to the UK Border Agency for indefinite leave to remain **not earlier than 28 days** before their leave is due to expire.

Only civil partners who have completed a period of 4 years as the civil partner of a person who has (at the time of decision on the entry clearance application) a right of abode in the United Kingdom or indefinite leave to enter or remain in the United Kingdom and who is on the same occasion seeking admission to the United Kingdom for the purposes of settlement, having lived together abroad with their civil partner throughout that 4 year period, should be issued with an entry clearance endorsed "settlement". These endorsements are rare.

Civil partners in possession of an entry clearance endorsed "settlement" should be granted indefinite leave to enter.

2.7 Knowledge of Life (KOL)

Civil partners applying for indefinite leave to enter who have completed 4 years as the civil partner of a person who is present and settled in the United Kingdom, or who is on the same occasion being admitted for settlement, will need to fulfil the knowledge of life and language in the UK requirement to meet the requirement in paragraph 281(i)(b)(ii).

If a person meets the requirement in paragraph 281(i)(b)(i) in having completed a period of 4 years as the civil partner of the sponsor, and having lived together outside the United Kingdom during that period, but does not meet the knowledge of life requirement, they will be admitted for an initial period not exceeding 27 months. They will be able to apply for indefinite leave as soon as they meet the knowledge of life requirement. They will not need to complete two years probationary leave in this category in the UK before applying for indefinite leave.

These applicants should be issued with an entry clearance endorsed "Settlement Spouse/ CP (KOL REQ): 2 years: Code 1".

This route ceased to exist on 9 July 2012, although those who were granted limited leave as above can make further applications for leave under Part 8 of the Rules.

Further guidance on KOL is to be found in Modernised Guidance at <http://www.ind.homeoffice.gov.uk/sitecontent/documents/policyandlaw/modernised/cross-cut/knowledge-of-life/kol.pdf?view=Binary> .

2.8 Criminality

From 6th April 2011 all applications for settlement, including applications for indefinite leave to enter as the civil partner of a person who is present and settled in the United Kingdom, will be subject to a change to the criminality requirement. The only exemption will be those who are seeking settlement via the 'protection route'

For applications made before 13 December 2012 there was a requirement for those applying for indefinite leave to enter or remain to not have an unspent conviction under the Rehabilitation of Offenders Act. For applications made on or after 13 December 2012 the applicant should not fall for refusal under the general grounds for refusal.

Please refer to the full criminality guidance for more information:

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/modernised/cross-cut/criminal-settle/criminal-settle.pdf?view=Binary>

2.9 Statistical codes

PCP Proposed civil partner

CP Civil partner for the probationary period

SCP Civil partner – given ILE joining or accompanying civil partner

2.10. Refusal of leave to enter

- Where a **non-visa national** seeks entry in this capacity without a valid United Kingdom entry clearance issued for this purpose and no compassionate circumstances exist, he should be refused entry under paragraph 283 of HC 395 as amended by HC582.
- A **visa national** seeking entry without a valid United Kingdom visa falls to be refused under paragraph 320(5). See **Chapter 9** to these instructions.

- Where a passenger seeking entry in this capacity holds an entry clearance for this purpose, refusal may only be considered under paragraph 321 (see **Chapter 9** to these instructions).
- In the case of a person returning to the United Kingdom from a temporary absence abroad, within a period for which he was previously given leave, reference **must** be made, before refusal, to **Chapter 1, Section 9, "Continuing leave"**.

Annex I provides examples of refusal formulae.

2.11 On entry refusal codes

E4 Lack of required non-settlement entry clearance, including those set aside on grounds of misrepresentation, forgery, failure to disclose material facts or where a change of circumstances has removed the basis of claim to admission

F1 For settlement without required entry clearance, including holder of forged entry clearance, entry clearance obtained by deception, or entry clearance where a change in circumstances has removed basis of claim to admission

Z1 Other reasons

2.12 Right of appeal and corresponding refusal form

See Chapter 12 for details on appeal rights.

3. Leave To Remain As A Civil Partner Of A Person Present And Settled In The United Kingdom

The requirements to be met by a person seeking to remain in the United Kingdom as civil partner of a person settled here are set out in paragraph 284 of HC 395 as amended by HC 582 and must be referred to when reading the following advice.

From 29 November 2010, applicants in this category have to meet the new English language requirement for partners. Please refer to Chapter 8 Section 1 Annex A3 of the Immigration Directorate Instructions for further guidance.

3.1 Key points

As stated above *all* of the relevant provisions *must* be referred to when considering applications for leave to remain in this category, but in general caseworkers need to be satisfied that:

- the applicant has limited leave to enter/ remain in the United Kingdom in accordance with the Immigration Rules, other than limited leave for 6 months or less (unless that leave was limited leave as a proposed civil partner, or unless that leave was granted to the applicant as the civil partner or same sex partner of a Relevant Points Based System Migrant (excluding a Tier 5(Temporary Worker) other than a private servant in a diplomatic household who applied to enter the UK before 6 April 2012 or a Tier 4 (General) Student, and that partner is the same person in relation to whom the applicant is applying for an extension of stay under paragraph 284 HC 395); and
- the applicant has provided evidence of a registered civil partnership, which is recognised in this country, to a person who is present and settled here; and
- the civil partnership is subsisting and that the couple intend living together permanently as civil partners.

Switching into this route

Grants of discretionary leave are outside the Immigration Rules. Therefore those persons granted discretionary leave, following a civil partnership cannot seek to switch into leave to remain on the basis of that same civil partnership. Provided the relationship continues to subsist they can seek to remain in the UK until they have completed 6 years' discretionary leave (in 2 periods of 3 years' stay) and then apply for settlement. Or, at a time of their choosing, they can leave the United Kingdom and apply for entry clearance from abroad.

Overstayers

On 6 April 2013 paragraph 284 of the Immigration Rules was amended to allow those who are overstayers in the UK by up to 28 days to meet the immigration status requirement of this route.

The 28 day period of overstaying is calculated from the latest of:

- the end of the last period of leave to enter or remain granted;
- the end of any extension of leave under sections 3C or 3D of the Immigration Act 1971; or
- the point that a migrant is deemed to have received a written notice of invalidity/rejection, in accordance with paragraph 34C or 34CA of the Immigration Rules, in relation to an in-time application for leave to remain.

When considering refusing an application on the grounds that it was made by an applicant who has overstayed by more than 28 days the caseworker must consider any evidence of exceptional circumstances which prevented the applicant from applying within the first 28 days of overstaying. The threshold here for what constitutes 'exceptional circumstances' is high, but could include delays resulting from unexpected or unforeseeable circumstances such as the following:

- serious illness which meant that the migrant or their representative was unable to submit the application in time (where supported by appropriate medical documentation);
- travel or postal delays which meant that the migrant or their representative was unable to submit the application in time; or
- inability to provide necessary documents. This would only apply to exceptional or unavoidable circumstances beyond the applicant's control, such as UKBA being at fault in the loss of, or delay in returning travel documents; or delay in the migrant being unable to replace documents following loss as a result of theft, fire or flood (where supported by evidence of the date of loss and the date replacement documents were sought).

Any decision to exercise discretion and not refuse the application on these grounds must be authorised by a senior caseworker (at SEO grade or above). When granting leave in these circumstances the migrant may be granted leave under the rules. The decision letter will need to make clear that leave is being granted because the Agency has accepted that there were exceptional circumstances which prevented them from applying within the 28 day period.

Where an application made out of time has passed the 28-day period or is submitted by an illegal entrant, refer to local instructions for advice.

Dependants of PBS Tier 4 and Tier 5 migrants

The partner of a points based system migrant not on a route to settlement cannot, with effect to applications made on or after 6 April 2013, switch into the partner route under paragraph 284 and amalgamate their leave as a partner under both routes towards the qualifying period for settlement.

Tier 5 (Temporary Worker) migrants who were granted leave as a private servant in a diplomatic household following an application to enter or remain in the UK submitted before 6 April 2012 were on a route to settlement. Therefore, any dependants are eligible to meet the immigration status requirement at paragraph 284(i)(b).

3.2 Making further enquiries

Where there are grounds for suspecting that the civil partnership is not genuine further enquiries may be necessary. Caseworkers should target those cases where:

- there is real reason to doubt from the evidence to hand that the civil partnership is not regarded as valid in the UK (see **Annex H, Civil partnerships, eligibility, registration, dissolution & glossary of terms**);
- there is an allegation or other information suggesting that the civil partnership may not be genuine, that the civil partnership was entered into under duress or the couple are not living together;
- the applicant has only recently entered the UK, has been living here illegally, has an outstanding or refused asylum application or a poor immigration history;
- having been admitted as the proposed civil partner of a named person, and the applicant has registered his civil partnership with someone else;

Further investigations would not normally be warranted where there is no evidence to support any doubts.

Leave should be granted in cases where some doubts exist but the evidence is considered to be insufficient to refuse or to justify making further enquiries. However, where leave is granted but there is good reason to believe that the civil partnership will not survive the officer should set the reasons for doubts on the file or on GCID, which should then be flagged. Caseworkers can then consider any subsequent application for settlement **in the light of the information available and decide what enquiries, if any, are appropriate. It is not sufficient to simply minute the file or GCID to the effect that settlement should not be granted without full enquiries.**

3.3 Interviews

It may be appropriate to have the couple interviewed. When deciding whether to interview, it is important to have clearly in focus what further information is required *and* how that information would be relevant to resolving the application. Caseworkers should consider an interview in the following circumstances:

- where it was suspected that the civil partnership was one of convenience previously but there was insufficient evidence to justify refusal at that stage;

- where the applicant had previously been refused leave to enter or remain;
- where the applicant has registered the civil partnership within a short space of time with a person with whom he had no substantial prior acquaintance;
- where information has come to light that the couple are no longer living together;
- where the only evidence of the subsisting civil partnership comes from the applicant seeking settlement.
- Where a section 24 (S24) report has been submitted by a Registrar.

Please note that **Annex A** provides guidance for caseworkers when considering interviewing applicants **at the settlement stage**.

Where a person seeks to remain to exercise access rights, caseworkers should see **Chapter 7, Section 1, Persons exercising rights of access**.

3.4 Maintenance and Accommodation

Maintenance and accommodation requirements are set out in the Rules. Applicants will provide information on these requirements when completing the application form. The whole application should be assessed according to the Rules.

Staff must consult guidance on maintenance when assessing an application. This directs staff how to assess and evidence their consideration of whether or not an applicant has provided evidence of 'adequate' maintenance. For more information see:

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/DIs/idischapter8/section1/annexf.pdf?view=Binary>

To ensure a consistent approach across UK Border Agency, maintenance and accommodation should be included in the grounds for refusal only if this has been approved at SCW level or above.

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

3.5 English language requirement

With effect from 29 November 2010, the Immigration Rules were amended to bring in an English language requirement for those people

applying for entry clearance, leave to enter or leave to remain in the UK as spouse, civil partner, fiancé(e), proposed civil partner, unmarried partner or same-sex partner of a British citizen or a person settled in the UK.

An applicant can meet the requirement in one of the following ways:

- by passing an acceptable test at a minimum level A1 of the Common European Framework of Reference for Languages (CEFR) with an approved provider, or
- by being a national of a majority English speaking country, or
- by having an academic qualification equivalent to a Bachelor's or Master's degree or PhD in the UK, which was taught in English.

If the applicant does not meet the requirement in one of the ways listed above, they may qualify for an exemption from the requirement to provide a test certificate if:

- they are aged 65 or over, or
- they have a disability (physical or mental condition) which prevents them from meeting the requirement, or
- there are exceptional compassionate circumstances which prevent them from meeting the requirement.

Please see Annex A3 "English Language Requirement" for further guidance.

3.6 Granting leave to remain

If there is no reason to doubt that the civil partnership is genuine then, provided the key points are satisfied, leave to remain should be granted for 2 years on Code 1. (In cases where there is reason to doubt the civil partnership see **Annex A** doubtful cases). The applicant should be advised that he may apply **not earlier than 28 days** before the end of the initial 2 year period, for indefinite leave to remain in the United Kingdom on the basis of the still subsisting civil partnership.

3.7 Statistical codes

- DB Extension – Civil partner is a British citizen
- DC Extension – Civil partner holds settled status only

3.8 Refusal of leave to remain

The general guidance on adverse decisions at Chapter 9, Section 1 provides important advice about the decision making process and should be consulted whenever an application falls to be refused.

Refusal of leave to remain as a civil partner of a person settled in the United Kingdom is under Paragraph 286 of HC 395 as amended by HC 582 on the grounds that all or each of the provisions of Paragraph 284 of HC 395 as amended by HC 582 are not satisfied.

Annex I provides examples of refusal formulae.

3.9 Curtailment of stay

Where we have been notified that a civil partnership has broken down during the probationary period, a person's stay in the United Kingdom may be curtailed where more than one month of their leave is remaining.

Chapter 9, section 5 provides further guidance on curtailment of stay.

3.10 Statistical codes

DV	Refusal – Unlawful civil partnership
DR	Refusal – Accommodation
DQ	Refusal – Maintenance
DS	Refusal – Maintenance and accommodation
DN	Refusal - Civil partnership terminated
DTC	Refusal – No intention to live together
DU	Refusal – Other reasons, including civil partner not settled or other combinations of the above
DZ	Refusal – English language requirement not met

4. Settlement

The requirements to be met by a person seeking indefinite leave to remain as the civil partner of a person settled in the United Kingdom are set out in paragraph 287 of HC 395 as amended by HC582 and must be referred to when reading the following advice.

4.1 Key points

Caseworkers must satisfy themselves that the civil partnership is subsisting and that each of the parties has the intention to live together permanently with the other as his or her civil partner.

4.2 Criminality

From 6th April 2011, all applications for settlement, including applications for indefinite leave as a civil partner, could not have an unspent conviction under the Rehabilitation of Offenders Act 1974.

For applications made under paragraphs 281 and 287 of the Rules before 13 December 2012 this requirement will continue to apply.

Changes to the immigration rules on 13 December 2012 removed the unspent conviction requirement. For applications made after that date under Part 8 you must still check that the application does not fail under the general grounds for refusal. See:

[General Grounds for Refusal guidance](#)

4.3 Applications for indefinite leave to remain at the end of the probationary period

Detailed enquiries may be made where doubts exist as to whether the relationship is genuine and subsisting. Circumstances necessitating such enquiries would be similar to those where application for leave to remain is made on the basis of civil partnership – see section 3.2.

4.4 Delayed travel on Entry Clearances conferring leave to enter

A person who arrived with an entry clearance which has effect as leave to enter as a civil partner of a person present and settled here, but who delayed their travel to the UK for some time after the "valid from" date, will be unable to complete the probationary period prior to the expiry of their conditions. Casework Instruction 103/606 gives guidance on how such cases should be handled.

For information on entry clearances conferring leave to enter, see **Chapter 1 Section 4**.

4.5 Interviews

For guidance on interviews, see 3.3. **Annex A** also provides guidance for caseworkers when considering interviewing applicants **at the settlement stage**.

Where a person seeks to remain to exercise access rights, caseworkers should see **Chapter 7, Section 1, Persons exercising rights of access**.

4.6 Absences from UK during probationary period

There is no specific requirement in the Rules that the entire probationary period must be spent in the United Kingdom. For example, where an applicant has spent a limited period outside of the United Kingdom in connection with his employment, this should not

count against him. However, if he has spent the majority of the period overseas, there may be reason to doubt that all the requirements of the Rules have been met. Each case must be judged on its merits, taking into account reasons for travel, length of absences and whether the applicant and sponsor travelled and lived together during the time spent outside the United Kingdom. These factors will need to be considered against the requirements of the Rules.

4.7 Knowledge of Life (KOL)

Civil partners applying for indefinite leave to remain after completing the probationary period will need to fulfil the knowledge of life and language in the United Kingdom requirement.

Further guidance on KOL is to be found in Modernised Guidance at <http://www.ind.homeoffice.gov.uk/sitecontent/documents/policyandlaw/modernised/cross-cut/knowledge-of-life/kol.pdf?view=Binary>

Note: From October 2013 all applicants for settlement or citizenship will be required to present a speaking and listening qualification at CEFR level B1 or above and pass the Life in the UK test.

4.8 Maintenance and accommodation

To ensure a consistent approach across UK Border Agency, maintenance and accommodation should only be the sole grounds for refusal with the agreement of an SCW or above.

Note: For applications dated on or after 01 August 2010, the SET(M) form requests that applicants submit both originals and photocopies of the documentation that is to be relied upon. If no photocopies are submitted, caseworkers should ensure that copies are made and placed on file. Copies of all documentary evidence submitted should be retained on file.

4.9 Same sex partners who have since formed a civil partnership

In some cases, a person may have been given leave to enter or leave to remain in the United Kingdom as a same sex partner but may subsequently have registered a civil partnership with that partner during the 2 year probationary period. In such cases, that person may apply for settlement, provided they have served a minimum of 24 months as either the partner or the civil partner of the same person.

4.10 Granting settlement

If the key point set out in paragraph 4.1 is met, settlement may be granted.

4.11 Statistical codes

Civil partner settled here but not British citizen

- 1(5) 57A Admitted as a proposed civil partner and benefits under section
52A Admitted as civil partner
5YA Admitted other than as a civil partner or proposed civil partner

Civil partner a British citizen

- 1(5) 56A Admitted as a proposed civil partner and benefits under section
5ZA Admitted as civil partner
5XA Admitted other than as a civil partner or proposed civil partner

Other civil partnership cases

- 55A Civil partner accepted for settlement outside the Rules

4.12 Refusal of settlement

The general guidance on adverse decisions at **Chapter 9, Section 1** provides important advice about the decision making process and should be consulted whenever an application falls to be refused.

Indefinite leave to remain should normally be refused if all the requirements of paragraph 287 of HC 395 as amended by HC 582 are not met.

Annex I provides examples of refusal formulae.

4.13 Statistical codes

- JA Refusal – Civil partnership terminated or no intention to live together
JF Refusal – Maintenance and accommodation
JPARSC01 Refusal – No KOL/ ESOL
JPARSCA11 Refusal – Unspent conviction

5. Bereaved civil partners

Paragraphs 287(b) (as amended by HC 582) make provision for civil partners who are bereaved during the probationary period to be granted indefinite leave to remain in the UK, **provided that the civil partnership was subsisting at the time of the sponsor's death.**

These Rules do not apply to persons admitted to the UK as the civil partner of a sponsor who has only limited leave to enter or remain in the UK, or who is a European Economic Area national exercising treaty rights here. Such persons have not been admitted to the UK for the purpose of settlement.

The Rules relating to bereaved civil partners do not apply to proposed civil partners.

Further guidance on dealing with applications from bereaved civil partners can be found in **Chapter 8, Section 1, paragraph 6.**

5.1 Criminality

From 6th April 2011, all applications for settlement, including applications for indefinite leave as a bereaved civil partner, could not have an unspent conviction under the Rehabilitation of Offenders Act 1974.

For applications made under section 287(b) of the Rules before 13 December 2012 this requirement will continue to apply.

Changes to the immigration rules on 13 December 2012 removed the unspent conviction requirement. For applications made after that date under Part 8 you must still check that the application does not fail under the general grounds for refusal. See:

[General Grounds for Refusal guidance](#)

6. Victims Of Domestic Violence

There is provision for civil partners of British citizens and persons settled here who have been subjected to domestic violence during the probationary period to apply for indefinite leave to remain as the victim of domestic violence. Further guidance on dealing with applications from victims of domestic violence can be found in Modernised Guidance at: <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/modernised/family/section4.pdf?view=Binary>.

7. Civil partners of members of HM Forces, permanent members of HM Diplomatic Service, comparable UK-based staff members of the British Council on a tour of duty overseas, or staff members of the Department For International Development who are British citizens or UK Settled

Paragraph 281 of HC 395 as amended by HC 582 makes special provision for foreign national civil partners who register a civil partnership with members of HM Forces or permanent members of the Diplomatic Service, comparable UK-based staff members of the British Council on a

tour of duty overseas, or staff members of the Department for International Development who are British citizens or UK settled and would otherwise find it difficult to obtain settlement in the UK.

7.1 Granting leave to enter and settlement

Where a member of the Forces, permanent diplomat, UK-based staff member of the British Council on a tour of duty overseas, or a staff member of the Department for International Development, who is a British citizen or UK-settled, registers a civil partnership with a foreign national whilst on a tour of duty abroad, the civil partner may obtain a settlement entry clearance and travel to the United Kingdom in order to obtain leave to enter for a 2-year probationary period. The person may then return to live with their sponsor overseas and may travel back here towards the end of the probationary period in order to make an application for indefinite leave to remain.

Similarly, where a civil partner who has been granted leave to enter or remain on the basis of a civil partnership accompanies a sponsor posted overseas in one of the above categories during the probationary period, the civil partner may return to the UK during the currency of their leave in order to apply for settlement.

The appropriate Stats codes and refusal codes are set out in paragraphs 2, 3 and 4 above.

7.2 Further guidance

It is not necessary for the applicant to be accompanied by their sponsor on either occasion, nor must the applicant be returning to the UK with the intention of taking up ordinary residence here with their sponsor. **The important criteria are that the parties are in a subsisting relationship and intend to live together permanently.**

7.3 Consideration of settlement applications

Where all or part of the probationary period has been spent outside the UK, the applicant must provide satisfactory evidence that they have been living abroad as the civil partner of a sponsor who is a Forces' member, or a permanent diplomat, or a comparable UK-based staff member of the British Council on a tour of duty overseas, or a staff member of the Department for International Development who is a British citizen or UK-settled. Suitable evidence might be a letter from the sponsor's commanding officer or personnel section detailing the sponsor's posting and confirming that the couple have been living together as civil partners in supported accommodation.

7.4 Further guidance

Difficulties may arise where a civil partner is unable to accompany their sponsor overseas e.g. to a war zone or a country considered to be potentially hazardous. Where an applicant can provide **clear evidence** (e.g. a letter from FCO or MOD) that they are not allowed to accompany their civil partner they may still be granted leave to enter or remain for the probationary period, **regardless of the fact that they are unable to live with their sponsor**. Consideration may also be given to granting ILR in such circumstances **provided that the applicant can provide evidence of a subsisting relationship and an intention to live together** e.g. evidence of correspondence, telephone calls, joint commitments.

7.5 Refusing a settlement application

In cases of doubt, or where an applicant chooses to live in the UK without their sponsor e.g. to maintain a home here or to have their children educated here, and there is no evidence to suggest that the couple cannot live together overseas, **an application for ILR should be refused**. The applicant may be granted extensions of leave to remain for 12 months at a time. **However, the application should be refused where we are not satisfied that the relationship is subsisting or that the couple intend to live together.**

It should be emphasised that these instructions apply **only** to civil partners of members of HM Forces and permanent members of HM Diplomatic Service or comparable UK-based staff members of the British Council who are on a tour of duty overseas, or staff members of the Department for International Development (DFID) who are British citizens or UK-settled. Civil partners of Crown servants on short tours of duty e.g. ECOs and consular staff, or persons working independently abroad or sent overseas by private companies **must qualify for settlement in the normal way.**

8. Other Cases

There may be cases which do not fall within the special provisions detailed above. **Discretionary Leave** may be granted in cases where an applicant has a reasonable Article 8 claim. **Leave Outside the Rules** may be appropriate in other cases where individual circumstances are so compelling that it is considered appropriate to grant some form of leave. These cases will be exceptional and **Discretionary Leave** or **Leave Outside the Rules should not be granted without reference to a senior caseworker.**

Where the civil partnership has ended because of the sponsor's desertion the expectation is that the civil partner should return to his/her home country. An application made in these circumstances should

normally be refused. Consideration may be given to such applications, but an application should only be granted where there are exceptional compassionate circumstances **over and above** the desertion of the civil partner. Consideration will need to be given to the applicant's circumstances in the United Kingdom and his home country. The presence of children from the relationship will also be a factor to be taken into account, especially if the children have the right of abode. But this fact alone is not sufficient to warrant granting Leave Outside the Rules or Discretionary Leave. In such cases all the individual circumstances must be taken into account.

8.1 Granting a further 12 months

Where there is reason to doubt the lasting nature of the civil partnership or where there is a real prospect of a civil partnership that has broken down being reconciled, it may be appropriate to grant a further period of 12 months Leave Outside the Rules instead of refusing the application outright. **The grant of a further 12 months should only be used in exceptional circumstances as an alternative to refusal and not without reference to a senior caseworker.**

Settlement should only be granted if requested. If a further period of leave to remain has been sought the reasons for this request should be established (the sponsor or applicant may not realise that they can apply for settlement). In some cases, it may be appropriate to grant a further 12 months. However, where the applicant requests settlement, but the sponsor writes separately requesting only 12 months leave to remain, settlement should be granted unless the sponsor is prepared for full disclosure at any appeal stage.