



Home Office

# **Immigration Directorate Instruction Family Migration: Appendix FM Section 1.0b**

## **Family Life (as a Partner or Parent) and Private Life: 10-Year Routes**

August 2015

# Contents

<b>Contents</b> .....	<b>2</b>
<b>1. Introduction</b> .....	<b>5</b>
1.1. Background .....	5
1.2. Article 8 of the European Convention on Human Rights (ECHR) .....	6
1.3. The best interests of the child.....	6
<b>2. Purpose</b> .....	<b>7</b>
2.1. Use of this guidance .....	7
2.2. General information about applications .....	7
2.3. Partner of a permanent member of HM Diplomatic Service, or a comparable UK-based staff member of the British Council, the Department of International Development or the Home Office .....	8
2.4. Other information about this guidance.....	8
<b>3. Family and Private Life Routes</b> .....	<b>10</b>
3.1. Introduction.....	10
3.2. General provisions.....	11
3.3. Specified evidence .....	11
3.4. Overview of the 10-year partner route .....	11
3.5. Overview of the 10-year parent route .....	12
3.6. Overview of the 10-year private life route .....	14
<b>4. General Grounds for Refusal</b> .....	<b>15</b>
<b>5. Suitability Requirements</b> .....	<b>16</b>
5.1. Leave to remain.....	16
<b>6. Family Life as a Partner</b> .....	<b>18</b>
6.1. General.....	18
6.2. Leave to remain.....	18
6.2.1. R-LTRP.1.1.(a).....	19
6.2.2. R-LTRP.1.1.(b).....	19
6.2.3. R-LTRP.1.1.(d).....	19
6.3. Decision to grant leave to remain as a partner .....	27
6.4. Decision to refuse leave to remain as a partner .....	28
<b>7. Family Life as the Parent of a Child in the UK</b> .....	<b>29</b>
7.1. General.....	29
7.2. Leave to remain.....	30

7.2.1.	R-LTRPT.1.1.(a).....	31
7.2.2.	R-LTRPT.1.1.(b).....	31
7.2.3.	R-LTRPT.1.1.(d).....	31
7.3.	Decision to grant leave to remain as a parent .....	37
7.4.	Decision to refuse leave to remain as a parent .....	38
<b>8.</b>	<b>Private Life in the UK.....</b>	<b>39</b>
8.1.	General.....	39
8.2.	Leave to remain.....	39
8.2.1.	276ADE(1)(i) – Suitability .....	39
8.2.2.	276ADE(1)(ii) – Valid application.....	40
8.2.3.	276ADE(1)(iii) to 276ADE(1)(vi) .....	40
8.3.	Decision to grant leave to remain on the basis of private life in the UK .....	45
8.4.	Decision to refuse leave to remain on the basis of private life in the UK .....	46
<b>9.</b>	<b>Exceptional Circumstances .....</b>	<b>47</b>
9.1.	Overview .....	47
9.2.	What are exceptional circumstances? .....	47
9.3.	Decision to grant leave to remain outside the Immigration Rules on the basis of exceptional circumstances .....	49
9.4.	Decision to refuse leave to remain outside the Immigration Rules .....	51
<b>10.</b>	<b>Compassionate Factors .....</b>	<b>52</b>
10.1.	Overview .....	52
<b>11.</b>	<b>Best Interests of a Child.....</b>	<b>53</b>
11.1.	Overview .....	53
11.2.	Factors to consider.....	54
11.2.1.	Is there a genuine and subsisting parental relationship?.....	54
11.2.2.	Is the child a British Citizen or have they lived in the UK for a continuous period of at least 7 years? .....	55
11.2.3.	Would it be unreasonable to expect a British Citizen child to leave the UK?.....	55
11.2.4.	Would it be unreasonable to expect a non-British Citizen child to leave the UK? ..	57
11.3.	Exceptional circumstances relating to a child’s best interests .....	58
11.3.1.	Decision to grant leave to remain outside the Immigration Rules on the basis of exceptional circumstances relating to a child’s best interests .....	59
11.3.2.	Decision to refuse leave to remain outside the Immigration Rules.....	61
<b>12.</b>	<b>Decisions in Cases Where a Valid Application is Not Required .....</b>	<b>63</b>
12.1.	When a valid application is not required .....	63
12.2.	Asylum/Humanitarian Protection or removal decisions.....	63

12.2.1.	Asylum/Humanitarian Protection claims .....	63
12.2.2.	Article 8 claims made while in immigration detention pending removal.....	64
12.2.3.	Consideration of an Article 8 claim in Asylum/Humanitarian Protection and removal decisions .....	64
12.3.	Appeals .....	65
12.3.1.	Appeals against refusal under the family and/or private life Rules .....	65
12.3.2.	Appeals against refusal under any other Part of the Rules .....	65
12.3.3.	Judicial Reviews.....	66
<b>13.</b>	<b>No Recourse to Public Funds .....</b>	<b>67</b>
13.1.	General.....	67
13.2.	Criteria for the non-imposition or lifting of the no recourse to public funds condition code.....	67
13.3.	Destitution .....	68
13.4.	Making a decision on the condition code .....	70
13.5.	Subsequent leave to remain applications .....	71
13.6.	Grants of leave to remain under earlier public funds policies .....	71
<b>14.</b>	<b>Case Information Database (CID) .....</b>	<b>72</b>
<b>Annex A - Refusal Paragraphs.....</b>		<b>74</b>
A1.	General.....	74
A2.	Refusal Introduction.....	74
A3.	Concluding Refusal Paragraph.....	74
A4.	Example Suitability Refusal Paragraphs.....	75
A5.	Example Partner Refusal Paragraphs .....	77
A6.	Example Parent Refusal Paragraphs .....	81
A7.	Example Private Life Refusal Paragraphs .....	85
A8.	Example Exceptional Circumstances Refusal Paragraphs.....	87
<b>15.</b>	<b>Contact for Further Information.....</b>	<b>89</b>

# 1. Introduction

## 1.1. 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) (right to respect for private and family life). Appendix FM to and paragraph 276ADE(1) of the [Immigration Rules](#) provide the basis on which a person can apply for entry clearance to or leave to remain in the UK on family life grounds or leave to remain here on private life grounds.

These Rules, together with the policy on exceptional circumstances, provide a clear basis for considering immigration cases in compliance with ECHR Article 8. In particular, the Immigration Rules reflect the qualified nature of Article 8, setting requirements which correctly 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 Rules also take into account the need to safeguard and promote the welfare of children in the UK.

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 family migrants being financially independent and able to speak English, as required by the family Immigration Rules, is now underpinned in primary legislation.

From 28 July 2014, the Immigration Rules were amended to align them with the public interest considerations for non-foreign criminal cases in sections 117B of the 2002 Act, inserted by section 19 of the 2014 Act. The amendments to the Rules do not represent any substantive change to the policies reflected in the Immigration Rules on family and private life implemented on 9 July 2012, but ensure consistency of language with that used in the 2014 Act, which now provides statutory underpinning for those policies.

Since 9 July 2012, further relevant Statements of Changes have been laid, to reflect the Supreme Court judgment in *Alvi* and to make corrections and clarifications to the Rules. These statements are Cm 8423 which came into force on 20 July 2012, HC 565 which came into force on 6 September 2012, HC 760 and HC 820 which came into force on 13 December 2012, HC 1039 which came into force on 6 April 2013, HC244 which came into force on 10 June 2013, HC 628 which came into force on 1 October 2013, HC803 which came into force on 1 December 2013, HC 1138 which came into force on 6 April 2014, HC198 which came into force on 1 July 2014, HC 532 which came into force on 28 July 2014, HC 693 which came into force on 6 November 2014, HC 1025 which came into force on 6 April 2015 and HC 297 which came into force on 3 August 2015. This guidance reflects the Rules as they apply to **all applications decided from 3 August 2015**.

This guidance must be used by decision makers considering applications under the family and private life Rules in [Appendix FM](#) and paragraphs [276ADE\(1\)-DH](#).

First, the decision maker must consider whether the applicant meets the requirements of the Rules, and if they do, leave under the Rules should be granted.

If the applicant does not meet the requirements of the Rules, the decision maker must move on to consider whether, considering all the factors raised by the application, there are exceptional circumstances which mean refusal of the application would result in unjustifiably harsh consequences for the applicant or their family such that refusal would not be proportionate under Article 8. If there are exceptional circumstances, leave outside the Rules should be granted. If not, the application should be refused.

## 1.2. Article 8 of the European Convention on Human Rights (ECHR)

Everyone has a right under ECHR Article 8 to respect for their private and family life, but it is a qualified right. Article 8 provides that it can be lawful to interfere with the exercise of that right where it is necessary to do so because of public interest considerations, and where the interference is proportionate to the public interest being pursued. In the immigration context, this usually means where it is necessary and proportionate for public safety, to safeguard the economic well-being of the UK or to protect the rights and freedoms of others.

ECHR Article 8 states:

**“Article 8(1)** Everyone has the right to respect for his private and family life, his home and his correspondence.

**Article 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.”

## 1.3. The best interests of the child

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 who are in the UK means that consideration of the child’s best interests is a primary consideration in immigration cases. This guidance and the Immigration Rules it covers form part of the arrangements for ensuring that this duty is discharged.

Decision makers must carefully consider all of the information and evidence provided concerning the best interests of a child in the UK when assessing whether an applicant meets the requirements of the Rules, and where they do not meet those requirements, whether there are exceptional circumstances that warrant a grant of leave outside the Rules.

The decision letter must demonstrate that a consideration has taken place of all the information and evidence provided concerning the best interests of a child in the UK. Decision makers must carefully assess the quality of any evidence provided. Original, documentary evidence from official or independent sources will be given more weight in the decision-making process than unsubstantiated assertions about a child’s best interests.

For further guidance, see Section [11](#).

[Back to Contents](#)

## 2. Purpose

### 2.1. Use of this guidance

This guidance must be used by decision makers considering whether to grant leave to remain on a 10-year route to settlement following a valid Human Rights application or claim for leave to remain (unless a valid application is not required in accordance with paragraph GEN.1.9. of Appendix FM and paragraph 276A0 of Part 7) on the basis of family life as a partner or parent or on the basis of private life in accordance with the following parts of the [Immigration Rules](#):

- paragraphs [276A0 – 276A04](#) and [276ADE\(1\)-DH](#) of Part 7,
- paragraph [A277](#) of Part 8,
- paragraphs [277-280](#), [289AA](#), [295AA](#) and [296](#) of Part 8,
- [Appendix FM](#),

or where considering whether to grant leave to remain outside the rules on the basis of exceptional circumstances.

### 2.2. General information about applications

From 6 April 2015, under the Immigration (Health Charge) Order 2015, applications for leave to remain under the 10-year partner, parent and private life routes are subject to the immigration health charge, in addition to the application fee, unless they are not required to pay the immigration health charge.

From 6 April 2015, under changes made by the Immigration Act 2014, all applications for leave to remain under the 10-year partner, parent and private life routes which are refused will attract a right of appeal on the basis that a human rights claim has been refused, regardless of whether the application was made at a time when the applicant had valid leave to remain. The decision maker should refer to the following guidance for further information:

- Immigration Act 2014 [Appeals Guidance](#) (internal link)
- [Immigration Act 2014 Appeals Guidance](#) (external link)

From 6 April 2015, the Immigration Rules contain paragraph [GEN.2.3\(1\) and \(2\) of Appendix FM](#) and [paragraph 276A01\(1\) and \(2\)](#), which provide that, where an applicant in the UK has been on temporary admission or temporary release for a continuous period of more than 6 months at the date of application qualifies for leave under the 10-year partner, parent or private life routes or for leave outside the Rules on the basis of exceptional circumstances, they may be granted leave to enter rather than leave to remain.

An applicant under the 10-year partner, parent or private life routes may be able to qualify for settlement (Indefinite Leave to Remain) after they have completed a continuous period of 120 months with leave under that route. They may, however, be able to qualify for settlement more quickly if they subsequently make a valid application for, and qualify for, the 5-year partner or 5-year parent route under Appendix FM. Their previous leave under the 10-year partner, parent or private life route would not count towards the continuous period of 60 months with leave under that 5-year route required before the applicant may be able to qualify for settlement under that route.

In an application for leave to remain under the 10-year family or private life routes, [paragraph 353 of the Immigration Rules](#) applies where an earlier asylum or human rights claim has been refused, withdrawn or treated as withdrawn under [paragraph 333C](#) of the Rules. The applicant must have raised asylum or human rights issues by means of an application or claim which was considered by the Home Office. Paragraph 353 cannot be applied where asylum or human rights grounds are raised for the first time in grounds of appeal. Paragraph 353 only applies where there is **no appeal** pending against the refusal of an earlier asylum or human rights claim and the applicant has exhausted their appeal rights: the decision maker must then apply paragraph 353 to any further material raised.

The decision maker should refer to the following guidance for further information:

- [Further Submissions Guidance](#) (internal link)
- [Further Submissions Guidance](#) (external link)

### **2.3. Partner of a permanent member of HM Diplomatic Service, or a comparable UK-based staff member of the British Council, the Department of International Development or the Home Office**

Under Appendix FM, the partner of a permanent member of HM Diplomatic Service or a comparable UK-based staff member of the British Council, the Department for International Development or the Home Office on a tour of duty outside the UK can complete their probationary period overseas after they have arrived in the UK and commenced their leave to enter or once they have 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 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.

### **2.4. Other information about this guidance**

The Immigration Rules are not reproduced in this guidance except where necessary to provide clarification for the decision maker. Links to the Rules are provided where they are referred to.

For ease of access, the decision maker is provided with links to the [Horizon 'work tools and guides' section of the Home Office intranet](#) (shown as 'internal link') and [the Home Office website on GOV.UK](#) for external access (shown as 'external link').

Suggested refusal paragraphs are contained in this guidance. In addition to explaining which Immigration Rules are not met and why, every entry clearance and in country refusal notice or letter must explain why a grant of entry clearance or leave to remain outside the Rules on the

basis of exceptional circumstances is not appropriate and contain appropriate appeal rights paragraphs.

[Back to Contents](#)

## 3. Family and Private Life Routes

### 3.1. Introduction

[Appendix FM](#) provides two 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 as a partner or parent is for those who meet all of the suitability and eligibility requirements of the Immigration Rules at every stage;
- the 10-year route as a partner or parent, which is only applicable to in-country applications, is for those who meet all of the suitability requirements, but only certain of the eligibility requirements as a partner or parent where paragraph EX.1 of Appendix FM is also met. Paragraph EX.1 is not an exception to the Rules, but to certain eligibility requirements of the 5-year partner and parent routes under Appendix FM. It provides the basis on which an applicant in the UK who does not meet all of the eligibility requirements of the 5-year partner or parent route can qualify for leave to remain under the Rules on the basis of their family life in the UK.

Paragraphs [276ADE\(1\)-DH of Part 7](#) of the Immigration Rules provide a 10-year route to settlement in the UK on the basis of private life.

Applications for leave on the 5-year routes to settlement can be made from outside the UK or in the UK.

Applications for leave on the 10-year routes to settlement **cannot** be made from outside the UK and must be made in the UK.

An applicant in the UK may apply for the 5-year partner route on form FLR(M), or the 5-year parent route on form FLR(FP), but if they fail to meet certain of the eligibility requirements their application under the 5-year route will be refused, and consideration given to whether they qualify under the 10-year partner, parent or private life routes.

Guidance on considering an application made under the 5-year partner or parent route can be found here:

- [Appendix FM 1.0a Family Life \(as a Partner or Parent\): 5-Year Route](#) (internal link)
- [Appendix FM 1.0a Family Life \(as a Partner or Parent\): 5-Year Route](#) (external link)

An applicant in the UK can also apply directly for the 10-year partner, parent or private life routes using form FLR(FP), e.g. where they know they cannot meet certain of the eligibility requirements of the 5-year routes.

In every application or claim where the decision maker is considering family or private life in the UK, consideration must be given to the 10-year of partner, parent and private life routes, as appropriate to the facts of the specific case.

The decision maker must ensure they go on to consider all dependants included in the application and assess their individual claims.

Exceptional circumstances must be considered in all cases that fall for refusal under the

Immigration Rules. Where the Rules are not met but there are exceptional circumstances, leave outside the Rules should be granted. For guidance on exceptional circumstances, see [Section 9](#).

Applicants granted leave outside the Rules may apply for further leave and may be granted further leave outside the Rules if they continue to qualify for it. After 10 years' continuous leave they can apply for indefinite leave to remain under the 10-year long residence route if they qualify for it.

A person in the UK with entry clearance or limited leave to remain granted on the basis of family or private life in an application made from 9 July 2012 should apply for further leave to remain no more than 28 days before their extant leave expires or no more than 28 days before they have completed 30 months in the UK with such leave. Up to 28 days of extant leave remaining at the date of application will be added to the period of leave granted.

## 3.2. General provisions

Paragraphs [GEN.1.1. to GEN.1.15. and GEN.2.3. of Appendix FM](#) and [paragraphs 276A00 to 276A04 of Part 7](#) of the Immigration Rules set out the general provisions an applicant must meet in order to remain in the UK on a 10-year route to settlement on the basis of their family or private life. The decision maker should refer to the requirements of the General provisions in full when making a decision on an application.

Under [GEN.1.5. of Appendix FM](#) if the Secretary of State has reasonable cause to doubt the genuineness of any document submitted in support of an application, and, having taken reasonable steps to verify the document, is unable to verify that it is genuine, the document will be discounted for the purposes of the application.

[Paragraph GEN.1.14. of Appendix FM](#) and [paragraph 276A03 of Part 7](#) introduce a condition on all applicants aged 18 or over granted leave to enter or remain under Appendix FM or on the basis of private life, whether this leave is granted under the Rules or outside the Rules, prohibiting them from undertaking studies in a discipline listed in [Appendix 6 of the Immigration Rules](#) without first obtaining an Academic Technology Approval Scheme (ATAS) clearance certificate from the Counter-Proliferation Department of the Foreign and Commonwealth Office. This also applies to those who will be 18 before that period of entry clearance or limited leave expires.

## 3.3. Specified evidence

Appendix FM must be read with Appendix FM-SE which sets out the specified evidence that must be submitted with applications. Applicants must provide all of the documents specified in Appendix FM-SE that are relevant to their application under Appendix FM. This is relevant to evidence of relationship requirements, such as provision of a marriage or civil partnership certificate.

## 3.4. Overview of the 10-year partner route

The 10-year partner route is available to those who are in the UK as the partner of someone who is British or settled in the UK or is in the UK with limited leave as a refugee or granted humanitarian protection (who cannot benefit from provisions under [Part 11](#) of the Immigration Rules regarding pre-flight family members).

The requirements to be met under the 10-year partner route are set out in [paragraph R-LTRP.1.1.\(a\), \(b\) and \(d\) of Appendix FM](#). In order to qualify for a grant of leave under the 10-year partner route, an applicant must meet all of the suitability and eligibility requirements at every stage, including:

- a) the applicant and their partner must be in the UK;
- b) the applicant must have made a valid application for limited or indefinite leave to remain as a partner (subject to the exceptions set out in [GEN.1.9. of Appendix FM](#) and as outlined in [Section 12.1](#) of this guidance); and
- d) (i) the applicant must not fall for refusal under Section S-LTR; Suitability leave to remain; and  
(ii) the applicant meets the relationship requirements of paragraphs E-LTRP.1.2. – 1.12. and the immigration status requirements in E-LTRP.2.1. – 2.2.; and  
(iii) paragraph EX.1.(a) or (b) applies.

Guidance on R-LTRP.1.1.(d)(i) – Suitability requirements can be found in Section 5 of this guidance.

Guidance on R-LTRP.1.1.(d)(ii) – Eligibility requirements can be found in Section [6.2.3.2](#) of this guidance.

Guidance on R-LTRP.1.1.(d)(iii) – Exception (EX) requirements can be found in Section [6.2.3.3](#) of this guidance.

In addition to the suitability requirements, any application on the basis of family life in the UK under Appendix FM is subject to provisions of the General Grounds for Refusal under [paragraph A320 of Part 9 of the Immigration Rules](#). Further guidance on this can be found in Section [4](#) of this guidance

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

Where an applicant for the 10-year partner route meets the relevant requirements of Appendix FM, leave to remain under that route should be granted.

If an applicant for the 10-year partner route fails to meet the requirements of the Rules, but there are exceptional circumstances on the basis of Article 8, leave to remain outside the Immigration Rules can be granted. Guidance on exceptional circumstances can be found in Section 9 of this guidance.

### 3.5. Overview of the 10-year parent route

The 10-year [parent route](#) provides a basis on which leave to remain can be granted to a parent who has responsibility for or access to their child following the breakdown of their relationship with the child's other parent.

This route is for single parents who:

- have sole parental responsibility for their child; **or**
- are the parent with whom the child normally lives, rather than the child's other parent (who is British or settled); **or**

- do not live with the child (who instead lives with a British or settled parent or carer), but 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 parent route is not for couples with a child together who are in a genuine and subsisting relationship. An applicant can only apply for the parent route if they are not eligible to apply for the partner route.

A 10-year parent route is available to those who are in the UK and who meet all of the suitability and eligibility requirements at every stage, including the fact that their child:

- is under the age of 18 years at the date of application; **and**
- is living 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.

The decision maker should note that a parent wishing to remain in the UK on the basis of their settled child who has **NOT** lived in the UK continuously for at least 7 years immediately preceding the date of application, cannot meet the requirements of the parent routes. The child must either be British, or have lived in the UK continuously for at least the last 7 years, for the parent to meet this requirement of these rules.

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.

The requirements to be met under the 10-year parent route are set out in [paragraph R-LTRPT.1.1.\(a\), \(b\) and \(d\) of Appendix FM](#). In order to qualify for a grant of leave under the 10-year parent route, an applicant must meet all of the requirements at every stage which are:

- a) the applicant and the child must be in the UK;
- b) the applicant must have made a valid application for limited or indefinite leave to remain as a parent (subject to the exceptions set out in [GEN.1.9. of Appendix FM](#), and as outlined in Section [12.1](#) of this guidance); and
- d) (i) the applicant must not fall for refusal under Section S-LTR; Suitability leave to remain; and  
(ii) the applicant meets the relationship requirements of paragraphs E-LTRPT.2.2-2.4. and the immigration status requirements in E-LTRPT.3.1. – 3.2.; and  
(iii) paragraph EX.1.(a) applies.

Guidance on R-LTRPT.1.1.(d)(i) – Suitability requirements can be found in Section [5](#) of this guidance.

Guidance on R-LTRPT.1.1.(d)(ii) – Eligibility requirements can be found in Section [6.2.3.2](#) of this guidance.

Guidance on R-LTRPT.1.1.(d)(iii) – Exception (EX) requirements can be found in Section [6.2.3.3](#) of this guidance.

In addition to the suitability requirements, any application on the basis of family life in the UK under Appendix FM is subject to provisions of the General Grounds for Refusal under

[paragraph A320 of Part 9 of the Immigration Rules](#). Further guidance on this can be found in Section [4](#) of this guidance.

Where an applicant for the 10-year parent route meets the relevant requirements of Appendix FM, leave to remain under that route should be granted.

If an applicant for the 10-year parent route fails to meet the requirements of the Rules, but there are exceptional circumstances on the basis of Article 8, leave to remain outside the Immigration Rules can be granted. Guidance on exceptional circumstances can be found in Section [9](#) of this guidance.

### 3.6. Overview of the 10-year private life route

Consistent with the public interest considerations set out in section 19 of the Immigration Act 2014 that 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 provide a stringent set of requirements to be met by applicants. A person is in the UK unlawfully if he requires leave to enter or remain in the UK but does not have it. For the purposes of this guidance, a person's immigration status is precarious if he is in the UK with limited leave to enter or remain but without settled or permanent status, or if he has leave obtained fraudulently, or if he has been notified that he is liable to deportation or removal.

The 10-year private life route is available to those who meet the suitability and eligibility requirements of paragraphs 276ADE(1)-DH at every stage, including those under paragraph 276ADE(1) which are:

- (i) the applicant must not fall for refusal under Section S-LTR.1.2 - 2.3 and S-LTR.3.1; Suitability leave to remain which is set out in Appendix FM; and
- (ii) the applicant must have made a valid application for limited or indefinite leave to remain on the grounds of private life in the UK (subject to the exceptions set out in [paragraph 276A0 of Part 7](#) and as outlined in Section [12.1](#) of this guidance); and
- (iii)-(vi) the applicant must meet one of the relevant requirements.

Guidance on S-LTR – Suitability requirements can be found in Section [5](#) of this guidance.

In addition to the suitability requirements, any application on the basis of private life in the UK under paragraph 276ADE(1) is subject to provisions of the General Grounds for Refusal under [paragraph A320 of Part 9 of the Immigration Rules](#). Further guidance on this can be found in Section [4](#) of this guidance.

Guidance on the continuous residence requirements under the private life Rules can be found in Section [8.2.3](#) of this guidance.

Where an applicant for the 10-year private life route meets the relevant requirements of the Immigration Rules, leave to remain under that route should be granted. If an applicant for the 10-year private life route fails to meet the requirements of the Rules, but there are exceptional circumstances on the basis of Article 8, leave to remain outside the Immigration Rules can be granted. Guidance on exceptional circumstances can be found in Section [9](#) of this guidance.

The decision maker must consider the private life of all the persons included in the application – the main applicant and also any dependants included in the application.

[Back to Contents](#)

## 4. General Grounds for Refusal

Applicants applying on the basis of family life as a partner, parent or child under [Appendix FM](#), and on the basis of private life under [paragraph 276ADE\(1\)](#) of the Immigration Rules are not subject to the General Grounds for Refusal, except for the provisions in paragraph 320(3), (10) and (11) which continue to apply to applications under Appendix FM as set out in the General Grounds for Refusal under [Part 9 of the Immigration Rules](#).

In addition to the suitability criteria that an applicant must meet under Appendix FM, the following general grounds for refusal must be considered:

320(3) failure by the person seeking entry to the United Kingdom to produce to the Immigration Officer a valid national passport or other document satisfactorily establishing his identity and nationality;

**320(10)** production by the person seeking entry clearance to the United Kingdom of a national passport or travel document issued by a territorial entity or authority which is not recognised by Her Majesty's Government as a state or is not dealt with as a government by them, or which does not accept valid United Kingdom passports for the purpose of its own immigration control; or a passport or travel document which does not comply with international passport practice; and

**320(11)** where the applicant has previously contrived in a significant way to frustrate the intentions of the Immigration Rules by:

- (i) overstaying; or
- (ii) breaching a condition attached to his leave; or
- (iii) being an illegal entrant; or
- (iv) using deception in an application for entry clearance, leave to enter or remain or in order to obtain documents from the Secretary of State or a third party required in support of the application (whether successful or not); and

there are other aggravating circumstances, such as absconding, not meeting temporary admission/reporting restrictions or bail conditions, using an assumed identity or multiple identities, switching nationality, making frivolous applications or not complying with the re-documentation process.

The following general ground for refusal must be considered in private life (but not applications under Appendix FM):

**322(1)** the fact that variation of leave to enter or remain is being sought for a purpose not covered by these Rules.

Guidance on considering the General Grounds for Refusal can be found here:

- [General Grounds for Refusal](#) (internal link)
- [General Grounds for Refusal](#) (external Link)

If the General Grounds for Refusal above apply in the applicant's case the application must be refused. Guidance on refusal wordings under General Grounds for Refusal can be found using the links to the guidance above.

## 5. Suitability Requirements

### 5.1. Leave to remain

In considering **all** applications for leave to remain in the UK on the basis of a person's family life as a partner, parent or child, or on the basis of a person's private life in the UK, the decision maker must consider whether the suitability requirements under paragraphs S-LTR.1.1.-3.1 of [Appendix FM of the Immigration Rules](#) are met.

Under [paragraph S-LTR.1.1](#), an applicant **will be refused** leave to remain on the grounds of suitability if any of the paragraphs S-LTR.1.2-1.7 apply.

Under [paragraph S-LTR.2.1](#), an applicant **will normally** be refused on grounds of suitability if any of the paragraphs S-LTR.2.2-2.4 apply.

Under [paragraph S-LTR.3.1](#) – when considering whether the presence of an applicant in the UK is not conducive to the public good, any legal or practical reasons why the applicant cannot presently be removed from the UK must be ignored.

In addressing suitability criteria under [paragraphs S-LTR.1.2. to S-LTR.1.6. of Appendix FM](#), decision makers must refer to the Criminality Guidance:

- [Criminality Guidance in ECHR Cases](#) (internal)
- [Criminality Guidance in ECHR Cases](#) (external)

In addressing suitability criteria under [paragraphs S-LTR.1.7, S-LTR.2.2. to S-LTR.2.4. and S-LTR.3.1. of Appendix FM](#), decision makers must refer to the General Grounds for Refusal Guidance:

- [General Grounds for Refusal Guidance](#) (internal)
- [General Grounds for Refusal Guidance](#) (external)

Where an application for further leave on the basis of Article 8 is received from a foreign criminal who has:

- previously been considered for deportation; and
- deportation was not effected (because Criminal Casework decided it would breach Article 8, or an appeal against the deportation was allowed); and
- they were granted leave to remain on the basis of Article 8;

the application should not be considered under Appendix FM, but under Part 13 of the Immigration Rules. This is because deportation remains conducive to the public good and in the public interest even though the foreign criminal has previously been exempted from deportation for a limited period.

The relevant Immigration Rules are set out in [paragraph A362 and paragraphs A398 to 399D of Part 13](#).

In such cases, you should refer the case to Criminal Casework Directorate (CCD) following the appropriate referral guidance.

The decision maker must consider whether criminality which **does not** fall within [paragraphs S-LTR1.2. to S-LTR.1.4.](#) may fall for refusal within [paragraphs S-LTR.1.5. to S-LTR.1.6.](#)

In doing so, decision makers should look at whether their conduct (including any convictions which do not fall within paragraphs S-LTR.1.3. to S-LTR.1.4.) mean the applicant's presence in the UK is undesirable or non-conducive to the public good under conduct, character, associations or other reasons. It is possible for an applicant to meet the suitability requirements, even where there is some low-level criminality.

Under paragraphs S-LTR.2.2-2.4, where an applicant will normally be refused if they fail to meet these suitability requirements, the decision maker can look at the nature of the issues under consideration and decide whether these are sufficiently serious to refuse on the basis of suitability (bearing in mind that anything which comes within these criteria should normally be refused) or whether there are compelling reasons to exercise discretion and to decide that the applicant meets the suitability criteria. This will be a case specific consideration.

If the decision maker decides that the applicant falls for refusal on the basis of suitability under any of the requirements in S-LTR, the application must be refused.

Guidance on refusal wordings under suitability can be found at Annex [A4](#) of this guidance.

[Back to Contents](#)

## 6. Family Life as a Partner

### 6.1. General

A summary of the stages of consideration for the 10-year partner route is provided in Section [0](#) of this guidance.

This section applies to applications for leave to remain and further leave to remain as a partner of a person who is:

- a British Citizen; or
- present and settled in the UK; or
- in the UK with limited leave as a refugee or granted humanitarian protection (where [family reunion under Part 11 of the Immigration Rules](#) does not apply).

A person present and settled in the United Kingdom includes a person who is being admitted for settlement on the same occasion as the applicant.

Under [GEN.1.2 of the General Provisions in Appendix FM](#), a 'partner' is defined as:

- (i) the applicant's spouse (which must be evidenced by a marriage certificate);
- (ii) the applicant's civil partner (which must be evidenced by a civil partnership certificate);
- (iii) the applicant's fiancé(e) or proposed civil partner; or
- (iv) a person who has been living together with the applicant in a relationship akin to a marriage or civil partnership for at least two years prior to the date of application (which we expect to be evidenced by documents showing that the couple have been living together at the same address for at least two years).

Where an applicant meets all the other requirements of the rules but does not meet the definition of "partner" at GEN.1.2., because they are not married or in a civil partnership **and** they have not been living together in a relationship akin to a marriage or civil partnership for at least 2 years, the relevant refusal paragraphs in Annex [A1](#) of this guidance should be used.

### 6.2. Leave to remain

As outlined in Section [0](#) of this guidance, the requirements to be met under the 10-year partner route are set out in [paragraph R-LTRP.1.1.\(a\), \(b\) and \(d\) of Appendix FM](#) which are:

- a) the applicant and their partner must be in the UK;
- b) the applicant must have made a valid application for limited or indefinite leave to remain as a partner (subject to the exceptions set out in [GEN.1.9. of Appendix FM](#) and as outlined in Section [12.1](#) of this guidance); and
- d) (i) the applicant must not fall for refusal under Section S-LTR: Suitability leave to remain; and  
(ii) the applicant meets the relationship requirements of paragraphs E-LTRP.1.2.-1.12. and the immigration status requirements in E-LTRP.2.1. – 2.2.; and  
(iii) paragraph EX.1.(a) or (b) applies.

In order to qualify for a grant of leave under the 10-year partner route, an applicant must meet

all of the requirements at every stage.

### 6.2.1. R-LTRP.1.1.(a)

The requirements to be met under [paragraph R-LTRP.1.1.\(a\)](#) are that the applicant and their partner **must** be in the UK. If the applicant or their partner is not in the UK, then they cannot meet this requirement of the Rules.

### 6.2.2. R-LTRP.1.1.(b)

The requirements to be met under [paragraph R-LTRP.1.1.\(b\)](#) are that the applicant must have made a valid application for limited or indefinite leave to remain as a partner.

As outlined in Section [12.1](#) of this guidance, this is subject to the exceptions set out in [GEN.1.9. of Appendix FM](#).

If a valid application has not been made, and the exceptions outlined in [paragraph GEN.1.9](#) do not apply, then the applicant cannot meet this requirement of the Rules.

### 6.2.3. R-LTRP.1.1.(d)

In order to meet the requirements of [paragraph R-LTRP.1.1.\(d\)](#), an applicant must:

- (i) not fall for refusal under [Section S-LTR: Suitability leave to remain](#); **and**
- (ii) meet:
  - the relationship requirements of [paragraphs E-LTRP.1.2 to E-LTRP.1.12](#) **and**
  - the immigration status requirements in [paragraph E-LTRP.2.1. and 2.2.](#); **and**
- (iii) meet [paragraph EX.1.\(a\) or \(b\)](#).

In order to meet the requirements of [paragraph R-LTRP.1.1.\(d\)](#) as a partner, an applicant must meet **all** of the requirements above.

#### 6.2.3.1. R-LTRP.1.1(d)(i) – Suitability

In order to meet the requirements of [paragraph R-LTRP.1.1.\(d\)\(i\)](#), an applicant must not fall for refusal under S-LTR: Suitability.

Section [5](#) of this guidance outlines the suitability requirements and Section [4](#) the general grounds for refusal, that must be considered in each application.

Any applicant who falls for refusal under suitability will not be able to meet the requirements of R-LTRP.1.1.(d)(i), regardless of whether they meet the requirements of R-LTRP.1.1.(d)(ii) and (iii).

#### 6.2.3.2. R-LTRP.1.1(d)(ii) – Eligibility

In order to meet the requirements of [paragraph R-LTRP.1.1.\(d\)\(ii\)](#), an applicant must not fall for refusal under E-LTRP: Eligibility. They must meet all of the relationship requirements under E-LTRP.1.2 to 1.12 **and** the relevant immigration status requirements in E-LTRP.2.1.

and 2.2.

Any applicant who falls for refusal under Eligibility will not be able to meet the requirements of R-LTRP.1.1.(d)(ii), regardless of whether they meet the requirements of R-LTRP.1.1.(d)(i) and (iii).

### **Relationship Requirements**

Applicants being considered under the 10-year route to settlement as a partner must meet all of the relationship requirements for leave to remain in [paragraphs E-LTRP.1.2. to E-LTRP.1.12. of Appendix FM](#).

#### **E-LTRP.1.2. Status of sponsor**

An applicant's partner must either be a British Citizen in the UK, present and settled in the UK, or in the UK with refugee leave or with humanitarian protection.

Under [paragraph 6 of the Immigration Rules](#) "present and settled" or "present and settled in the UK" means that the person concerned is settled in the United Kingdom and, at the time that 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 UK their home with the applicant if the application is successful.

Where the person concerned is a British Citizen or settled in the UK and is:

- (i) a member of HM Forces serving overseas, or
- (ii) a permanent member of HM Diplomatic Service, or a comparable UK-based staff member of the British Council, the Department for International Development or the Home Office on a tour of duty outside the UK, and the applicant has provided the evidence specified in paragraph 26A of Appendix FM-SE,

then for the purposes of Appendix FM the person is to be regarded as present and settled in the UK, and in paragraphs R-LTRP.1.1.(a) and R-ILRP.1.1.(a) of Appendix FM the words "and their partner must be in the UK" are to be disregarded.

#### **E-LTRP.1.3. and E-LTRP.1.4. Minimum age**

The decision maker must be satisfied that the applicant and their partner are aged 18 or over at the date of application.

#### **E-LTRP.1.5. Prohibited degree of relationship**

The decision maker must be satisfied that the applicant and their partner are not within the prohibited degree of relationship as defined in the Marriage Act 1949, the Marriage (Prohibited Degrees of Relationship) Act 1986 and the Civil Partnership Act 2004. This definition is contained in [paragraph 6 of the Immigration Rules](#).

In England and Wales, the [Marriage Act 1949](#) prohibits a marriage between a person and any person mentioned in the following list:

Adoptive child
Adoptive parent
Child
Former adoptive child
Former adoptive parent
Grandparent
Grandchild
Parent
Parent's sibling
Sibling
Sibling's child

In the list "sibling" means a brother, sister, half-brother or half-sister.

The [Marriage Act 1949](#) prohibits a marriage between a person and any person in the following list, until both parties are aged 21 or over, and provided that the younger party has not at any time before attaining the age of 18 been a child of the family in relation to the other party:

Child of former civil partner
Child of former spouse
Former civil partner of grandparent
Former civil partner of parent
Former spouse of grandparent
Former spouse of parent
Grandchild of former civil partner
Grandchild of former spouse

### E-LTRP.1.6. Couple to have met in person

The decision maker must be satisfied that the applicant and their partner have met in person.

"To have met" has been interpreted by the Tribunal as "to make 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 that if the parties had been childhood friends, it could be acceptable, although the meeting of two infants would not. A mutual sighting or mere coming face to face followed by telephone or written contact would not suffice. The Tribunal decided that "met" implies a face to face meeting itself resulting in the making of mutual acquaintance.

Where the decision maker is 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.

### E-LTRP.1.7. Genuine and subsisting relationship

The decision maker must be satisfied that the relationship between the applicant and their partner is genuine and subsisting.

An applicant applying as an unmarried partner or same sex partner must have been living together with their partner in a relationship akin to a marriage or civil partnership for at least two years prior to the date of application and must provide documentary evidence of this. This is defined in [GEN.1.2. of Appendix FM](#).

In assessing whether a relationship is genuine and subsisting, the decision maker should refer to the Guidance on Genuine and Subsisting Relationships:

- [FM 2.0 Genuine and Subsisting Relationship guidance](#).

### E-LTRP.1.8. Valid marriage or civil partnership

The decision maker must be satisfied that, if the applicant and their partner are married or in a civil partnership, that this is a valid marriage or civil partnership.

The applicant and sponsor must provide evidence that their marriage or civil partnership is valid in the UK. The required evidence of marriage or civil partnership is specified in [paragraphs 22 to 26 of Appendix FM-SE](#).

In assessing whether a couple have a valid marriage or civil partnership, the decision maker should refer to the following guidance:

- [FM 1.3 Recognition of Marriage and Divorce](#)
- [FM 2.1 Eligibility, registration, dissolution & glossary of terms - civil partnerships](#)

### E-LTRP.1.9. Previous relationship has broken down permanently

The decision maker must be satisfied that any previous relationship of the applicant or their partner must have broken down permanently, unless it is a polygamous marriage or civil partnership which falls within [paragraph 278\(i\) of the Immigration Rules](#).

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.

**Note:** An applicant whose marriage or civil partnership to a previous partner (or that of the applicant's partner) has not been legally dissolved, may qualify under Appendix FM as an unmarried partner or same sex partner, provided that they meet the criteria of [paragraph GEN.1.2. of Appendix FM](#) and they provide evidence that the new relationship is genuine and subsisting and that the previous relationship has broken down permanently.

In assessing whether any previous relationship of the applicant or their partner has broken down permanently, the decision maker should refer to the following guidance:

- FM 1.3 Recognition of Marriage and Divorce
- FM 2.1 Eligibility, registration, dissolution & glossary of terms - civil partnerships

## E-LTRP.10. Intention to live together permanently in the UK

The decision maker must be satisfied that the applicant and their partner intend to live together permanently in the UK.

Under [paragraph 6 of the Immigration Rules](#) “intention to live together permanently with the other” or “intend to live together permanently” means an intention to live together, evidenced by a clear commitment from both parties that they will live together permanently in the UK immediately following the outcome of the application in question or as soon as circumstances permit thereafter.

The applicant and their partner must live, have been living or intend to live together permanently in the UK. Each case must be judged on its merits.

**In applications for further leave to remain or for indefinite leave to remain in the UK as a partner**, where there have been limited periods of time spent outside of the UK during the period when the applicant had leave as a partner, 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 in connection with the applicant’s or their partner’s employment, holidays, training or study.

If they have spent the majority of the period overseas, there may be reason to doubt that all the requirements of the rules have been met, e.g. 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 sponsor 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 a permanent member of HM Diplomatic Service, or a comparable UK-based staff member of the British Council, the Department for International Development or the Home Office on a tour of duty outside the UK, the words “in the UK” in this definition do not apply.

In Appendix FM, the partner of a permanent member of HM Diplomatic Service or a comparable UK-based staff member of the British Council, the Department for International Development or the Home Office on a tour of duty outside the UK can serve their probationary period overseas once they have been here 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. They 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.

### Immigration status requirements

Applicants being considered under the 10-year route to settlement as a partner must meet the immigration status requirements for leave to remain in [paragraph E-LTRP.2.1. and E-LTRP.2.2. of Appendix FM.](#)

### E-LTRP.2.1.

The applicant must not be in the UK:

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

### E-LTRP.2.2.

The applicant must not be in the UK:

- on temporary admission or temporary release, unless the applicant has been so for a continuous period of more than 6 months at the date of application and EX.1. applies; or
- in breach of immigration laws (disregarding any period of overstaying for a period of 28 days or less), unless paragraph EX.1. applies.

### 6.2.3.3. R-LTRP.1.1(d)(iii) – EX.1. Exceptions to certain eligibility requirements for leave to remain as a partner

In order to meet the requirements of R-LTRP.1.1.(d)(iii), paragraph EX.1. must apply in the applicant's case (which means the applicant must meet the requirements contained in either EX.1(a) or EX.1.(b)). If the applicant has failed to meet the eligibility requirements for the 10-year partner route (the relationship or applicable immigration status requirements), paragraph EX.1. cannot apply in their case.

Any applicant who does not meet the requirements in paragraph EX.1. will not be able to meet the requirements of R-LTRP.1.1.(d)(iii), regardless of whether they meet R-LTRP.1.1.(d)(i) and (ii).

### EX.1 – General

Paragraph EX.1 is not a standalone requirement, but where it applies it provides an exception to meeting certain eligibility requirements which apply in the 5-year partner route.

Applicants being considered under the 10-year partner route must meet the requirements in [paragraph EX.1. of Appendix FM](#) which states that 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) 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 or in the UK with refugee leave or humanitarian protection, 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.

Applicants 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 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), outlined at Sections [6.2.3.1](#) and [6.2.3.2](#) of this guidance.

#### **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 who are in the UK, by which we mean their best interests, as reflected in case law, in particular, ZH (Tanzania).

The decision maker must have regard to the best interests of the child as a primary consideration (but not the only or the paramount consideration). They must fully consider the child’s best interests.

Where the decision maker determines that 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, the decision maker must assess whether it is reasonable to expect the child to leave the UK under paragraph EX.1.(a). In doing so they must carefully consider all of the information provided in the application.

The decision maker must refer to Section [11](#) of this guidance for further information on how to consider the best interests of a child and assess whether it is reasonable to expect the child to leave the UK.

#### **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 two forms:

1. 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; or
2. 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 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", the decision maker should have regard to the individual circumstances of the applicant and their partner, based on all the information that has been provided.

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, but 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.

The assessment of whether family life can continue overseas will generally consider 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 return, or where one or both of them has or have more than one nationality. In that case the decision maker can take account of 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 conclude that the couple must have been communicating whilst in the UK. 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.

Being separated from extended family members – such as might happen where the partner's parents and/or siblings live here – would not usually amount to an insurmountable obstacle, unless there were particular exceptional factors in the case.

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, would not usually amount to an insurmountable obstacle.

The factors which might be relevant to the consideration of whether an insurmountable obstacle exists include but are not limited to:

- a. **Ability to lawfully enter and stay in another country.** The decision maker should

consider the ability of the parties to lawfully enter and stay in another country. Decision makers should consider country policy and information where relevant. However, the onus is on the applicant to show that it is not possible 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 would **not** amount to an insurmountable obstacle.

- b. **Cultural barriers.** This might be relevant in situations where the partner would be so disadvantaged that they could not be expected to go and live in that country, for example a same sex couple where the UK partner would face substantial social discrimination, or where the rights and freedoms of the UK partner would be severely restricted. It must be a barrier which either cannot be overcome or would present a very serious hardship to the partner such that it amounts to an insurmountable obstacle.
- c. **The impact of a mental or physical disability.** Whether or not either party has a mental or physical disability, a move to another country may involve a period of hardship as the person adjusts to their new surroundings. But a physical or mental disability could be such that in some circumstances it could lead to very serious hardship, for example due to lack of health care that amounted to an insurmountable obstacle.
- d. **The security situation in the country of return.** In some circumstances there may be particular risks to foreign nationals which extend to the whole of the country of return.

### 6.3. Decision to grant leave to remain as a partner

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 (d), the applicant will be granted leave to remain for a period of 30 months as a partner under [paragraph D-LTRP.1.2. of Appendix FM](#), on a 10-year route to settlement.

Under paragraph GEN.1.11A, this grant of leave will be subject to a condition of **no recourse to public funds**, unless the applicant has provided the decision maker with satisfactory evidence that they are destitute, or satisfactory evidence that there are particularly compelling reasons relating to the welfare of a child of a parent in receipt of a very low income.. For further guidance on the policy on recourse to public funds, see Section 13 of this guidance.

Where an applicant currently has extant leave at the date of application, any period of remaining extant leave, up to a maximum of 28 days, will be added to the period of leave that they are being granted under paragraph D-LTRP.1.2. An applicant with extant leave in this scenario will therefore be granted a period of leave slightly in excess of 30 months.

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.

The decision maker must ensure they go on to consider all dependants included in the application and assess their individual claims.

## 6.4. Decision to refuse leave to remain as a partner

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

The application should be refused under [paragraph D-LTRP.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 maker should go on to consider whether the applicant meets the requirements for leave to remain on the basis of family life as a parent of a child in the UK, or on the basis of private life in the UK.

In **every** case that falls for refusal under the Immigration Rules, the decision maker must go on to give full consideration to whether there are any exceptional circumstances.

The decision maker should refer to the following sections of this guidance for further information:

- Section 7 – Family Life as a Parent of a Child in the UK
- Section [8](#) – Private Life in the UK
- Section [9](#) – Exceptional Circumstances

Guidance on refusal wordings under the partner rules can be found at Annex [A5](#), and for exceptional circumstances, at Annex [A5](#) to this guidance.

## 7. Family Life as the Parent of a Child in the UK

### 7.1. General

A summary of the stages of consideration for the 10-year parent route is provided in Section [3.5](#) of this guidance.

This section applies to applications for leave to remain and further leave to remain as the parent of a child in the UK, and where the child:

- is under the age of 18 years at the date of application; **and**
- is living 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.

The decision maker should note that a parent wishing to remain in the UK on the basis of their settled child who has **NOT** lived in the UK continuously for at least 7 years immediately preceding the date of application, cannot meet the requirements of the parent routes. The child living in the UK must either be British, or have lived in the UK continuously for at least the last 7 years, for the parent to meet this requirement of these rules.

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 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](#). A wider definition applies to certain child applicants not covered by this guidance.

The parent routes under Appendix FM (5-year and 10-year) provide a basis on which leave to remain can be granted to a parent who has responsibility for or direct access in person to their child following the breakdown of their relationship with the child's other parent.

The parent routes are for single parent applicants who:

- have sole parental responsibility for their child; **or**
- are the parent with whom the child normally lives, rather than the child's other parent (who is British or settled); **or**
- do not live with the child (who lives with a British or settled parent or carer), but 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 parent routes are not for couples with a child who are in a genuine and subsisting partner relationship together. Applicants in this position must apply under the partner routes or under the private life route (if neither parent is British or settled in the UK). An applicant can only apply under the parent routes if they are not eligible to apply under the partner routes.

As well as including a natural parent, under [paragraph 6 of the Immigration Rules](#), a 'parent' is defined as:

- the stepfather of a child whose father is dead and the reference to stepfather includes a relationship arising through civil partnership;
- the stepmother of a child whose mother is dead and the reference to stepmother includes a relationship arising through civil partnership and;
- the father as well as the mother of an illegitimate child where he is proved to be the father;
- an adoptive parent, where a child was adopted 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 where a child is the subject of a de facto adoption in accordance with the requirements of paragraph 309A of these Rules (except that an adopted child or a child who is the subject of a de facto adoption may not make an application for leave to enter or remain in order to accompany, join or remain with an adoptive parent under paragraphs 297-303);
- in the case of a child born in the UK who is not a British citizen, a person to whom there has been a genuine transfer of parental responsibility on the ground of the original parent(s)' inability to care for the child.

Where an applicant meets all the other requirements of the Rules but does not meet the definition of "parent" at [paragraph 6 of the Immigration Rules](#), the relevant refusal paragraphs in Annex [A6](#) of this guidance should be used.

## 7.2. Leave to remain

As outlined in Section [3.5](#) of this guidance, the requirements to be met under the 10-year parent route are set out in [paragraph R-LTRPT.1.1.\(a\), \(b\) and \(d\) of Appendix FM](#) which are:

- a) the applicant and the child must be in the UK;
- b) the applicant must have made a valid application for limited or indefinite leave to remain as a parent (subject to the exceptions set out in [GEN.1.9. of Appendix FM](#), and as outlined in Section [12.1](#) of this guidance); and
- d) (i) the applicant must not fall for refusal under Section S-LTR; Suitability leave to remain; and  
(ii) the applicant meets the relationship requirements of paragraphs E-LTRPT.2.2-2.4. and the immigration status requirements in E-LTRPT.3.1. – 3.2.; and  
(iii) paragraph EX.1.(a) applies.

In order to qualify for a grant of leave under the 10-year parent route, an applicant must meet all of these requirements at every stage.

### 7.2.1. R-LTRPT.1.1.(a)

The requirements to be met under [paragraph R-LTRPT.1.1.\(a\)](#) are that the applicant and their child **must** be in the UK. If the applicant or their child is not in the UK, then they cannot meet this requirement of the Rules.

### 7.2.2. R-LTRPT.1.1.(b)

The requirements to be met under [paragraph R-LTRPT.1.1.\(b\)](#) are that the applicant must have made a valid application for limited or indefinite leave to remain as a parent.

As outlined in Section [12.1](#) of this guidance, this is subject to the exceptions set out in [GEN.1.9. of Appendix FM](#).

If a valid application has not been made, and the exceptions outlined in [paragraph GEN.1.9.](#) do not apply, then the applicant cannot meet this requirement of the Rules.

### 7.2.3. R-LTRPT.1.1.(d)

In order to meet the requirements of [paragraph R-LTRPT.1.1.\(d\)](#), an applicant must:

- (i) not fall for refusal under [Section S-LTR: Suitability leave to remain](#); **and**
- (ii) meet:
  - o the relationship requirements of [paragraphs E-LTRPT.2.2 to E-LTRP.2.4](#) **and**
  - o the immigration status requirements in [paragraph E-LTRPT.3.1. and 3.2.](#); **and**
- (iii) meet paragraph EX.1.(a).

In order to meet the requirements of [paragraph R-LTRPT.1.1.\(d\)](#) as a parent, an applicant must meet **all** of the requirements above.

#### 7.2.3.1. R-LTRPT.1.1(d)(i) – Suitability

In order to meet the requirements of [paragraph R-LTRP.1.1.\(d\)\(i\)](#), an applicant must not fall for refusal under [S-LTR: Suitability](#).

Section [5](#) of this guidance outlines the suitability requirements, and Section [4](#) the General Grounds for Refusal, which must be considered in every application.

Any applicant who falls for refusal under suitability will not be able to meet the requirements of R-LTRPT.1.1.(d)(i), regardless of whether they meet the requirements of R-LTRPT.1.1.(d)(ii) and (iii).

#### 7.2.3.2. R-LTRPT.1.1(d)(ii) – Eligibility

In order to meet the requirements of [paragraph R-LTRPT.1.1.\(d\)\(ii\)](#), an applicant must not fall for refusal under [E-LTRP: Eligibility](#). They must meet all of the relationship requirements under E-LTRPT.2.2. to 2.4 **and** the relevant immigration status requirements in E-LTRPT.3.1. and 3.2.

Any applicant who falls for refusal under eligibility will not be able to meet the requirement of R-LTRPT.1.1.(d)(ii), regardless of whether they meet R-LTRPT.1.1.(d)(i) and (iii).

## Relationship requirements

Applicants being considered under the 10-year parent route must meet all of the relationship requirements for leave to remain in [paragraphs E-LTRPT.2.2. to E-LTRPT.2.4. of Appendix FM.](#)

### E-LTRPT.2.2.

An applicant's child must be under the age of 18 at the date of application, living in the UK and either be a British Citizen or have lived in the UK continuously for at least the 7 years immediately preceding the date of application.

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" and "is not leading an independent life" are defined in [paragraph 6 of the Immigration Rules](#), and are outlined in section [7.1](#) of this guidance.

"Living in the UK" means that the child concerned is living in the UK at the time an application under the rules is made, is physically present here and the applicant intends to make the UK their home with the child, if the application is successful. A parent cannot rely on their relationship with a child who is overseas to obtain leave in this route.

### E-LTRPT.2.3. and E-LTRPT.2.4.

Under paragraph E-LTRPT.2.3. the decision maker must be satisfied that:

- the applicant has sole parental responsibility for the child; or
- the child normally lives with the applicant and not their other parent (and the other parent is a British Citizen or settled in the UK); or
- the parent or carer with whom the child normally lives must be a British Citizen or settled in the UK.

If the child normally lives with their British or settled parent or carer:

- the applicant in the parent route cannot be the partner of this British or settled parent or carer (which includes a British or settled person who has been in a relationship with the applicant for less than 2 years prior to the date of application); and
- the applicant in the parent route must not be eligible to apply for leave to remain as a partner under Appendix FM.

Under paragraph E-LTRPT.2.4. the decision maker must be satisfied that the applicant has provided evidence to show that they:

- have sole parental responsibility for the child, or that the child normally lives with them;  
**or**
- 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; **and**
- 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 “sole parental responsibility”, “normally lives with” and “direct access in person ” can be found below.

### **Sole parental responsibility**

Sole parental responsibility must be interpreted in line with the definition in this guidance.

Sole 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.

A parent who claims to have sole responsibility must provide evidence they have exercised this role since the other parent abdicated or abandoned their parental role. This may be over a period of several years or may be several months before an application.

The burden of proof is on the applicant to provide satisfactory evidence to the decision maker that they meet the rules. In some instances it may be appropriate to interview an applicant to establish whether they have sole responsibility for their child or contact the other parent to confirm they have no parental responsibility.

When establishing sole responsibility, the decision maker must consider the following:

- have decisions and actions in relation to the upbringing of the child been done under the direction of the applicant and not the other parent or any other person?
- is the parent responsible and answerable for the child’s welfare and what happens to them in key areas of the child’s life to the exclusion of others?
- sole responsibility is not the same as legal custody.
- a person saying they have sole responsibility must provide evidence of meeting all elements of the definition. Evidence of significant or even exclusive financial provision for a child by their parent does not in itself demonstrate ‘sole responsibility’.
- who asserts continual control in regards to the child’s upbringing including, but not limited to:
  - decisions regarding the child’s education.
  - decisions regarding the child’s health.
  - consenting to medical treatment for a child.
  - decisions regarding the child’s religion.
  - decisions regarding the child’s residence.
  - maintaining personal relations and direct contact with the child.
  - providing the child with appropriate direction and guidance.
  - protecting the child.
  - responsibility for the child’s property.
  - acting as the child’s legal representative.
  - decisions regarding how a child spends their holidays or recreational time.
- where both parents are involved in the child’s upbringing it will be rare for a person to establish sole responsibility.

- sole responsibility can be recent or long standing. Any recent change of arrangements should be scrutinised to make sure this is genuine rather than seeking to get around immigration control.

Some day-to-day responsibility (or decision-making) for the child's welfare may be shared with others, such as relatives or friends, for practical reasons.

As long as the applicant is ultimately responsible and answerable for the welfare of the child, this does not prevent the applicant from being a parent with sole responsibility within the meaning of the Immigration Rules.

The decision maker is not considering whether the applicant (or anyone else) has day-to-day responsibility, 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 responsibility for the child.

The decision maker must not make a decision that would have the effect of denying a parent who has not abdicated or abandoned parental responsibility contact with that child.

The decision maker must carefully consider each application and on a case by case basis.

### **Normally lives with**

This means both parents (one of whom is a British Citizen or settled person) who are no longer in a subsisting relationship but who 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 the migrant parent.

From 13 December 2012 applicants who apply for leave to remain in the UK can apply in this category where they have:

- a joint residence order, or
- 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 has broken down with a British Citizen or settled person and who has shared or equal custody of a child to remain in the UK where it is in the child's best interest.

When establishing who the child normally lives with, the decision maker must be satisfied:

- the relationship between the applicant and the other parent has broken down and the relationship 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 or consensual agreement from the British or settled parent.
- evidence that the child normally lives with the applicant in the UK and not their British or settled parent has been provided.

An applicant simply being a parent of a child in the UK is not enough to meet the requirements of this provision.

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 and so as not to disadvantage the migrant parent, the child is considered to normally live with the migrant parent.

The 'normally lives with' requirement is not intended to cover people who:

- the child occasionally lives with, for example only at weekends, during holidays or an overnight stay once a week.
- can qualify as a partner under Appendix FM of the Immigration Rules.

There is no specified evidence that an applicant has to provide in order to demonstrate who a child normally lives with, but the onus is on the applicant to show that a child normally lives with the migrant parent.

Evidence to show a child normally lives with an applicant can include, but is not exclusive to correspondence from:

- a court in the form of a court order showing joint or shared custody.
- the settled partner confirming joint or shared custody.
- a doctor, hospital or dentist.
- a school or playgroup.
- the Department for Work and Pensions (DWP).
- HM Revenue & Customs (HMRC).
- social services.

### **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;
- a letter or sworn affidavit from the UK-resident parent or carer of the child; or
- evidence from a contact centre detailing contact arrangements.

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

It is not enough for an applicant to provide evidence only that they have been granted direct access to a child. The Rules require an applicant to show they have direct access in person with the child, are currently taking an active role in the child's upbringing and will continue to do so.

### **Immigration status requirements**

Applicants being considered under the 10-year route to settlement as a parent must meet the Immigration Status Requirements for leave to remain in [paragraph E-LTRPT.3.1. and 3.2. of Appendix FM.](#)

### **E-LTRPT.3.1.**

The applicant must not be in the UK:

- as a visitor; **or**
- 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.

### **E-LTRPT.3.2.**

The applicant must not be in the UK:

- on temporary admission or temporary release, unless the applicant has been so for a continuous period of more than 6 months at the date of application and EX.1. applies; or
- in breach of immigration laws (disregarding any period of overstaying for a period of 28 days or less), unless paragraph EX.1. applies.

### **7.2.3.3. R-LTRPT.1.1(d)(iii) – EX.1. Exceptions to certain eligibility requirements for leave to remain as a parent**

In order 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. This means that the applicant must meet the requirements contained in paragraph EX.1(a). If the applicant has failed to meet the eligibility requirements for the 10-year parent route (the relationship or applicable immigration status requirements), paragraph EX.1. cannot apply in their case.

An applicant who does not meet the requirements in paragraph EX.1.(a) 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).

### **EX.1. – General**

Paragraph EX.1. is not a standalone requirement, but where it applies it provides an exception to meeting certain eligibility requirements of the 5-year parent route.

Applicants being considered under the 10-year parent route must meet the requirements in [paragraph EX.1. of Appendix FM](#) which states 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) it would not be reasonable to expect the child to leave the UK;

Applicants being considered under the 10-year parent route must meet the requirements set out at EX.1.(a). They cannot qualify for leave to remain on the parent route on the basis of EX.1.(b).

Even if the requirements in EX.1.(a) are met, the applicant will not qualify for leave to remain as a parent under the 10-year parent route if they do not also meet all 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 at Sections [7.2.3.1](#) and [7.2.3.2](#) of this guidance.

### EX.1.(a) – Reasonable to expect

The criteria set out 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 who are in the UK, by which we mean their best interests.

The decision maker must have regard to the best interests of the child as a primary consideration (but not the only or the paramount consideration). They must fully consider the child's best interests.

Under paragraph EX.1.(a), the decision maker must assess 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, and whether it is reasonable to expect the child to leave the UK, and must carefully consider all of the information provided in the application.

The decision maker must refer to Section 11 of this guidance for information on how to consider the best interests of a child and assess whether there is a genuine and subsisting parental relationship and whether it is reasonable to expect the child to leave the UK.

## 7.3. Decision to grant leave to remain as a parent

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 (d), the applicant will be granted leave to remain for a period of 30 months as a parent under [paragraph D-LTRPT.1.2. of Appendix FM](#), on a 10-year route to settlement.

Under paragraph GEN.1.11A, this grant of leave will be subject to a condition of **no recourse to public funds**, unless the applicant has provided the decision maker with satisfactory evidence that they are destitute, or satisfactory evidence that there are particularly compelling reasons relating to the welfare of a child of a parent in receipt of a very low income. For further guidance on the policy on recourse to public funds, see Section [13](#) of this guidance.

Where an applicant currently has extant leave at the date of application, any period of remaining extant leave, up to a maximum of 28 days, will be added to the period of leave that

they are being granted under paragraph D-LTRPT.1.2. An applicant with extant leave in this scenario will therefore be granted a period of leave slightly in excess of 30 months.

The applicant should be advised that, where eligible, they should make a valid application for further leave to remain as a parent 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.

The decision maker must ensure they go on to consider all dependants included in the application and assess their individual claims.

## 7.4. Decision to refuse leave to remain as a parent

The applicant will fall for refusal as the parent of a child in the UK if the decision maker is not satisfied that **all** of the requirements of R-LTRPT.1.1.(a), (b) and (d) are met.

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 maker should then go on to consider whether an applicant can meet the requirements for leave to remain on the basis of private life in the UK. If the applicant has failed to meet the requirements of the parent rules because they are not a single parent, but have a partner, then the decision maker should also consider whether the applicant can meet the requirements for leave to remain on the basis of their family life with a partner.

In **every** case that falls for refusal under the Immigration Rules, the decision maker must go on to give full consideration to whether there are any exceptional circumstances.

The decision maker should refer to the following sections of this guidance for further information:

- Section [6](#) – Family life as a Partner
- Section [8](#) – Private Life in the UK
- Section [9](#) – Exceptional Circumstances

Guidance on refusal wordings under the parent rules can be found at Annex [A6](#), and for exceptional circumstances, at Annex [A8](#) to this guidance.

[Back to Contents](#)

## 8. Private Life in the UK

### 8.1. General

A summary of the stages of consideration for the 10-year private life route is provided in Section [3.6](#) of this guidance.

This section applies to applications for leave to remain and further leave to remain on the basis of their private life in the UK.

The decision maker must ensure they consider the private life of all dependants included in the application.

A person who is outside the UK cannot make an application to enter the UK on the basis of their private life in the UK.

### 8.2. Leave to remain

The requirements to be met under the 10-year private life route are set out in [paragraph 276ADE\(1\) and 276ADE\(2\) of the Immigration Rules](#).

In order to qualify for a grant of leave under the 10-year private life route, an applicant must meet all of the requirements of paragraph 276ADE(1) which are:

- (i) the applicant must not fall for refusal under Section S-LTR.1.2 - 2.3 and S-LTR.3.1; Suitability leave to remain; **and**
- (ii) the applicant must have made a valid application for limited or indefinite leave to remain on the grounds of private life in the UK (subject to the exceptions set out in [paragraph 276A0 of Part 7](#) and as outlined in Section [12.1](#) of this guidance); **and**
- (iii)-(vi) the applicant must meet **one** of the relevant requirements.

In order to qualify for a grant of leave under the 10-year private life route, an applicant must meet all of the requirements at every stage.

#### 8.2.1. 276ADE(1)(i) – Suitability

In order to meet the requirements of [paragraph 276ADE\(1\)\(i\)](#), an applicant must not fall for refusal under [S-LTR: Suitability](#). In 10-year private life route cases, the decision maker must consider whether the suitability requirements in [paragraphs S-LTR.1.2 to S-LTR.2.3 and S-LTR.3.1 of Appendix FM](#) are met.

Section [5](#) of this guidance outlines the suitability requirements and Section [4](#) the General Grounds for Refusal, which must be considered in each application.

Any applicant who falls for refusal under suitability will not be able to meet the requirement of [paragraph 276ADE\(1\)\(i\)](#), regardless of whether they meet the requirements of paragraphs 276ADE(1)(ii) - (vi).

### **8.2.2. 276ADE(1)(ii) – Valid application**

The requirements to be met under [paragraph 276ADE\(1\)\(ii\)](#) are that the applicant must have made a valid application for limited or indefinite leave to remain on the basis of private life in the UK.

As outlined in Section [12.1](#) of this guidance, this is subject to the exceptions set out in [paragraph 276A0 of Part 7 of the Immigration Rules](#).

If a valid application has not been made, and the exceptions outlined in [paragraph 276A0](#) do not apply, then the applicant cannot meet this requirement of the rules.

### **8.2.3. 276ADE(1)(iii) to 276ADE(1)(vi)**

In order to meet the requirements of [paragraph 276ADE\(1\)\(iii\) to 276ADE\(1\)\(vi\)](#), the decision maker must be satisfied that an applicant meets one of the following requirements:

- (iii) has lived continuously in the UK for at least 20 years (discounting any period of imprisonment); or
- (iv) is under the age of 18 years and has lived continuously in the UK for at least 7 years (discounting any period of imprisonment) and it would not be reasonable to expect the applicant to leave the UK; or
- (v) is aged 18 years or above and under 25 years and has spent at least half of his life living continuously in the UK (discounting any period of imprisonment); or
- (vi) subject to paragraph 276ADE(2), is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but there would be very significant obstacles to the applicant's integration into the country to which he would have to go if required to leave the UK.

Paragraph 276ADE(2) sets out that paragraph 276ADE(1)(vi) does not apply, and may not be relied upon, in circumstances in which it is proposed to return a person to a third country pursuant to Schedule 3 to the Asylum and Immigration (Treatment of Claimants, etc) Act 2004.

#### **8.2.3.1. 20 years' continuous residence**

[Paragraph 276ADE\(1\)\(iii\)](#) sets out the criteria to be applied, together with the other requirements of the rules, in assessing whether to grant leave to remain to an applicant on the basis of their private life.

In order to meet this requirement, an applicant must have lived continuously in the UK for at least 20 years, discounting any period of imprisonment. Further information on continuous residence can be found in Section 8.2.3.5 below.

#### **8.2.3.2. Child under the age of 18 years who has lived continuously in the UK for at least 7 years**

[Paragraph 276ADE\(1\)\(iv\)](#) sets out the criteria to be applied, together with the other

requirements of the rules, in assessing whether to grant leave to remain to an applicant who is under the age of 18 on the basis of their private life.

In order to meet these requirements, a child under 18 must have lived continuously in the UK for at least 7 years, discounting any period of imprisonment. Further information on continuous residence can be found in Section 8.2.3.5 below.

The criteria set out in [paragraph 276ADE\(1\)\(iv\)](#) 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 who are in the UK, by which we mean their best interests.

The decision maker must have regard to the best interests of the child as a primary consideration (but not the only or the paramount consideration). They must fully consider the child's best interests.

The decision maker must assess whether it is reasonable to expect a child to leave the UK under [paragraph 276ADE\(1\)\(iv\)](#), and must carefully consider all of the information provided in the application. Decisions must not be taken simply on the basis of assertions about the best interests of the child. All the relevant factors need to be assessed in the round.

When considering [paragraph 276ADE\(1\)\(iv\)](#), the decision maker must refer to Section 11 of this guidance for further information on how to consider the best interests of a child and assessing whether it is reasonable to expect the child to leave the UK.

### **8.2.3.3. Aged 18 to 24**

[Paragraph 276ADE\(1\)\(iii\)](#) sets out the criteria to be applied, together with the other requirements of the rules, in assessing whether to grant leave to remain to an applicant who is aged between 18 and 24, on the basis of their private life.

In order to meet these requirements, an applicant aged between 18 and 24 must have lived continuously in the UK for at least half their life, discounting any period of imprisonment. Further information on continuous residence can be found in Section 8.2.3.5 below.

### **8.2.3.4. Assessing whether there are “very significant obstacles to integration into” the country of return**

Paragraph 276ADE(1)(vi) of the Immigration Rules, allows an applicant who is over the age of 18 and who has lived continuously in the UK for less than 20 years, to meet the requirements of this rule if they can demonstrate there would be very significant obstacles to the applicant's integration into the country to which he would have to go if required to leave the UK.

When assessing whether there are “very significant obstacles to integration into the country to which they would have to go if required to leave the UK”, the starting point is to assume that the applicant will be able to integrate into their country of return, unless they can demonstrate why that is not the case. The onus is on the applicant to show that there are very significant obstacles to that integration, not on the decision maker to show that there are not.

The decision maker should expect to see original, independent and verifiable documentary evidence of any claims made in this regard, and must place less weight on assertions which are unsubstantiated. Where it is not reasonable to expect corroborating evidence to be

provided, consideration must be given to the credibility of the applicant's claims.

A very significant obstacle to integration means something which would prevent or seriously inhibit the applicant from integrating into the country of return. The decision maker is looking for more than obstacles. They are looking to see whether there are "very significant" obstacles, which is a high threshold. Very significant obstacles will exist where the applicant demonstrates that they would be unable to establish a private life in the country of return, or where establishing a private life in the country of return would entail very serious hardship for the applicant.

The assessment of whether there are very significant obstacles to integration will generally consider the proposed country of return, unless there is information to suggest that the applicant might have a choice about where they choose to relocate to, such as where they have a right to reside in a country other than the country of return, or where they have more than one nationality. In that case the decision maker can take account of whether there are very significant obstacles to integration continuing in any of the relevant countries.

The decision maker must consider all the reasons put forward by the applicant as to why there would be obstacles to their integration in the country of return. These reasons must be considered individually and cumulatively to assess whether there are very significant obstacles to integration. In considering whether there are very significant obstacles to integration, the decision maker should consider whether the applicant has the ability to form an adequate private life by the standards of the country of return – not by UK standards. The decision maker will need to consider whether the applicant will be able to establish a private life in respect of all its essential elements, even if, for example, their job, or their ability to find work, or their network of friends and relationships may be differently constituted in the country of return.

The fact the applicant may find life difficult or challenging in the country of return does not mean that they have established that there would be very significant obstacles to integration there. The decision maker must consider all relevant factors in the person's background and the conditions they are likely to face in the country of return in making their decision as to whether there are very significant obstacles to integration.

The decision maker will need to consider the specific obstacles raised by the applicant. They will also need to set these against other factors in order to make an assessment in the individual case. Relevant considerations include:

#### *Cultural background*

- Consider evidence of the applicant's exposure to and level of understanding of the cultural norms in the country of return. Where the person has spent their time in the UK living mainly amongst a diaspora community from that country, then it may be reasonable to conclude they have cultural ties with that country even if they have never lived there or have been absent from that country for a lengthy period. If the applicant has cultural ties with the country of return, then it is likely that it would be possible for them to establish a private life there. Even if there are no cultural ties the cultural norms of that country may be such that there are no barriers to integration.

#### *Length of time spent in the country of return*

- Where the applicant has spent a significant period of time in the country of return it will

be difficult for them to demonstrate there would be very significant obstacles to integration into that country. The decision maker must consider the proportion of the person's life spent in that country and the stage of life the person was at when in that country.

#### *Family, friends and social network*

- An applicant who has family or friends in the country of return should be able to turn to them for support to help them to integrate into that country. The decision maker must consider whether the applicant or their family have sponsored or hosted visits in the UK by family or friends from the country of return, or the applicant has visited family or friends in the country of return.
- The decision maker must consider the quality of any relationships with family or friends in the country of return, but they do not have to be strong familial ties and can include ties that could be strengthened if the person were to return.

Guidance on some examples of common claims is provided below.

#### *Applicant has no friends or family members in the country of return*

- Where there are no family, friends or social networks in the country of return that is not in itself a very significant obstacle to integration. Many people successfully migrate to countries where they have no ties.
- If there are particular circumstances in the applicant's case which mean they would need assistance to integrate it will also be relevant to consider whether there are any organisations in the country of return which may be able to assist with integration.

#### *Applicant has never lived in the country of return or only spent early years there*

- If an applicant has never lived in the country of return, or only spent their early years there, this will not necessarily mean that there are very significant obstacles preventing them from integrating particularly if they can speak a language of that country, e.g. if the country of return is one where English is spoken or if a language of the country was spoken at home when they were growing up. For these purposes, fluency is not required – conversational level language skills or a basic level of language which could be improved on return, would be sufficient. The cultural norms of the country and how easy it is for the person to adapt to them will also be relevant.

#### *Applicant cannot speak any language spoken in the country of return*

- Where there is credible evidence that an applicant cannot speak any language which is spoken in the country of return, this will not in itself be a very significant obstacle to integration unless they can also show that they would be unable to learn a language of that country, for example because of a mental or physical disability.

#### *Applicant would have no employment prospects on return*

- Lack of employment prospects is very unlikely to be a very significant obstacle to integration, In assessing a claim that an absence of employment prospects would prevent an applicant from integrating in the country of return, their circumstances on

return should be compared to the conditions that prevail in that country and to the circumstances of the general population, not to their circumstances in the UK.

Less weight should be given to generalised claims about country conditions that have not been particularised to take account of the applicant's individual circumstances.

### *Private life in the UK*

The degree of private life an individual has established in the UK is not relevant to the consideration of whether there are very serious obstacles to integration into the country of return. However, this will be relevant to the consideration of whether, where the applicant falls for refusal under the Rules, there are exceptional circumstances which would make refusal unjustifiably harsh for the applicant.

### **8.2.3.5. Continuous residence**

In paragraph 276ADE(1) the provisions in (iii) to (v) require an applicant to have had a designated length of continuous residence in the UK.

"Continuous residence" is defined in [paragraph 276A\(a\) of the Immigration Rules](#) as:

- "continuous residence" means residence in the UK for an unbroken period, and for these purposes a period shall not be considered to have been broken where an applicant is absent from the UK for a period of 6 months or less at any one time, provided that the applicant in question has existing limited leave to enter or remain upon their departure and return, but shall be considered to have been broken if the applicant:
  - (i) has been removed under Schedule 2 of the 1971 Act, section 10 of the 1999 Act, has been deported or has left the UK having been refused leave to enter or remain here; or
  - (ii) has left the UK and, on doing so, evidenced a clear intention not to return; or
  - (iii) left the UK in circumstances in which he could have had no reasonable expectation at the time of leaving that he would lawfully be able to return; or
  - (iv) has been convicted of an offence and was sentenced to a period of imprisonment or was directed to be detained in an institution other than a prison (including, in particular, a hospital or an institution for young offenders), provided that the sentence in question was not a suspended sentence; or
  - (v) has spent a total of more than 18 months absent from the United Kingdom during the period in question.

"Lived and/or living continuously" is defined in [paragraph 276A\(c\) of the Immigration Rules](#) as:

- "lived continuously" and "living continuously" mean "continuous residence", except that paragraph 276A(a)(iv) shall not apply.

The decision maker should be aware that an applicant applying on the basis of their private life in the UK, will not break their continuous residence if they have spent time in prison

because time in prison will not be counted towards the period of residence, and time before and after imprisonment can be aggregated to make up the full amount of time.

The decision maker should refer to the following guidance for further information:

- [Long Residence Guidance](#) (internal link)
- [Long Residence Guidance](#) (external link)

### 8.2.3.6. Evidence of residence

To demonstrate length of residence in the UK, applicants will need to provide credible evidence from independent sources, for example letters from a housing trust, local authority, bank, school or doctor. The decision maker must be satisfied the evidence provided has not been tampered with or otherwise falsified, and that it relates to the person who is making the application.

To be satisfied the UK residence was continuous, the decision maker should normally expect to see evidence to cover every 12 month period of the length of continuous residence, and travel documents to cover the entire period, unless satisfied on the basis of a credible explanation provided as to why this has not been submitted.

For an application made 28 days or less after the expiry of previous leave, when considering a continuous period, the decision maker can disregard any periods of overstaying between periods of leave.

## 8.3. Decision to grant leave to remain on the basis of private life in the UK

Where an applicant meets the requirements for leave to remain on the basis of private life in the UK under paragraph 276ADE(1), the applicant will be granted leave to remain for a period of 30 months on the basis of private life under [paragraph 276BE\(1\) of Part 7 of the Immigration Rules](#), on a 10-year route to settlement.

Under paragraph 276A02, this grant of leave will be subject to a condition of **no recourse to public funds**, unless the applicant has provided the decision maker with satisfactory evidence that they are destitute, or satisfactory evidence that there are particularly compelling reasons relating to the welfare of a child of a parent in receipt of a very low income. For further guidance on the policy on recourse to public funds, see Section [13](#) of this guidance.

Where an applicant currently has extant leave at the date of application, any period of remaining extant leave, up to a maximum of 28 days, will be added to the period of leave that they are being granted under paragraph 276BE(1). An applicant with extant leave in this scenario will therefore be granted a period of leave slightly in excess of 30 months.

The applicant should be advised that, where eligible, they should make a valid application for further leave to remain on the basis of their private life in the UK 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.

The decision maker must ensure they go on to consider any dependants included in the application and assess their individual claims.

## 8.4. Decision to refuse leave to remain on the basis of private life in the UK

The applicant will fall for refusal of leave to remain on the basis of private life in the UK if the decision maker is not satisfied that **all** of the requirements of [paragraph 276ADE\(1\)](#) are met.

The application should be refused under [paragraph 276CE of Part 7 of the Immigration Rules](#), 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.

If the applicant has failed to meet the requirements of the private life rules, but they have a partner or child in the UK, then the decision maker should also consider whether the applicant can meet the requirements for leave to remain on the basis of their family life as a partner or parent on a 10-year route to settlement.

In **every** case that falls for refusal under the Immigration Rules, the decision maker must go on to give full consideration to whether there are any exceptional circumstances.

The decision maker should refer to the following sections of this guidance for further information:

- Section [6](#) – Family life as a Partner
- Section [7](#) – Family life as a Parent of a Child in the UK
- Section [9](#) – Exceptional Circumstances

Guidance on refusal wordings under the private life rules can be found at Annex [A7](#), and for exceptional circumstances, can be found at Annex [A8](#) to this guidance.

[Back to Contents](#)

## 9. Exceptional Circumstances

### 9.1. Overview

Where an applicant does not meet the requirements of the Rules under Appendix FM and paragraph 276ADE(1)-DH, the decision maker must go on in every case to consider whether there are exceptional circumstances which warrant a grant of leave outside the Rules on Article 8 grounds.

In doing so, the decision maker must consider all relevant factors raised by the applicant.

In

- cases certified as clearly unfounded, under section 94(1A) or section 94(2) of the Nationality, Immigration and Asylum Act 2002, on the basis that the person is entitled to reside in a State listed at section 94(4) [Designated States] or on a case by case basis; or
- where it has been decided that further submissions do not amount to a fresh claim under paragraph 353 of the Immigration Rules;

the decision maker no longer needs to include a separate consideration of Article 8 case law in the decision letter. However, the decision maker should note that the fact that the applicant does not meet the requirements of the Rules is not itself grounds on which to certify the claim as clearly unfounded. Any exceptional circumstances raised must be such that, even if accepted as true, would clearly not make removal a breach of Article 8.

The Immigration Rules – now underpinned in respect of the weight to be given to the public interest under Article 8 by primary legislation in section 19 of the Immigration Act 2014 – set out the position of the Secretary of State on proportionality under Article 8.

The Rules under Appendix FM and paragraph 276ADE(1)-DH state how the balance should be struck between individual rights and the public interest in assessing Article 8. They provide clear instructions for the decision maker on the approach they must normally take and they therefore provide the basis for a clear, consistent and transparent decision-making process. This means that it will be in exceptional circumstances only that a decision made in accordance with the Rules will lead to an outcome which is disproportionate under Article 8. This is likely to occur only rarely.

In considering whether the applicant meets the requirements of the Immigration Rules, the decision maker will already have given consideration to the best interests of the child in assessing whether it would be reasonable to expect that child to leave the UK. The decision maker should also consider the best interests of the child in determining whether there are exceptional circumstances. The decision maker must consider Section 11 of this guidance.

### 9.2. What are exceptional circumstances?

“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 EX.1 of Appendix FM have been missed by a small margin. Instead, “exceptional” means circumstances in which refusal would result

in unjustifiably harsh consequences for the individual or their family such that refusal of the application would not be proportionate under Article 8. If the family could all go to the country of return together but they choose to separate, this will not in itself constitute exceptional circumstances. However, the decision maker should not usually make a decision that forces a family to split if there is no criminality to add weight to the public interest in removal. Cases that raise exceptional circumstances that warrant a grant of leave outside the rules are likely to be rare.

When considering whether there are exceptional circumstances, the decision maker should consider all the circumstances relating to the applicant and their family members which have been raised, including as regards wider family members beyond their partner and child (or parent where the applicant is a child).

In determining whether there are exceptional circumstances, the decision-maker must consider **all** relevant factors raised by the applicant and weigh them against the public interest under Article 8. Examples of relevant factors include the following:

- **The best interests of any child in the UK affected by the decision.** The decision maker must refer to Section 11 of this guidance for further guidance on the consideration of the best interests of a child.
- **The nature of the family relationships involved**, such as the length of the applicant's marriage and how frequently they have contact with their children if they do not live with them. What evidence is there that the couple do or do not have a genuine family life? Exceptional circumstances on the basis of Article 8 can only be established where Article 8 is engaged. Family life does not usually engage Article 8 in relationships between adult family members, such as parents and their adult children, or in relationships with wider family members, such as grandparents/grandchildren, uncles/aunts, nephews/nieces or adult siblings, except in cases of unusual or exceptional dependency.
- **The immigration status of the applicant and their family members.** The decision maker should take into account the circumstances around the applicant's entry to the UK and the proportion of the time they have been in the UK legally as opposed to illegally. Did they form their relationship with their partner at a time when they were in the UK unlawfully? Family life formed in the knowledge that their stay here is unlawful should be given less weight (when weighed against the public interest in their removal) than family life formed by a person lawfully present in the UK.
- **The nationalities of the applicant and their family members.** The nationality of any child of an applicant is a matter of particular importance given the intrinsic importance of citizenship, and the advantages of growing up and being educated in their own country.
- **How long the applicant and their family members have lawfully lived in the UK**, and how strong their social, cultural and family ties are with the UK. Exceptional circumstances on the basis of Article 8 can only be established where Article 8 is engaged.
- **The likely circumstances the applicant's partner and/or child would face in the applicant's country of return.** It is relevant to consider how long the applicant resided in the country of return and what social, cultural and family ties they have retained with

that country, as well as the degree of exposure their partner and/or child has had to that country and to its language and culture.

- **Whether there are any factors which might increase the public interest in removal**, for example where the applicant has failed to meet the suitability requirements because of deception or issues around their character or conduct in the UK, or the fact that they do not speak English or are not financially independent.
- **Cumulative factors** should be considered. For example, where the applicant has family members in the UK but their family life does not provide a basis for stay and they have a significant private life in the UK. Although under the Rules family life and private life are considered separately, when considering whether there are exceptional circumstances private and family life should be taken into account. 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 their family.

This guidance takes account of relevant Strasbourg and domestic case law on Article 8 and section 55 of the Borders, Citizenship and Immigration Act 2009 in identifying the family and private life factors that are relevant to the Article 8 proportionality assessment. These remain the factors to be considered in a case raising Article 8. However, the weight to be attached to the public interest under Article 8, including in respect of controlling immigration and protecting the public and the rights and freedoms of others, is now set out in primary legislation, in Part 5A of the Nationality, Immigration and Asylum Act 2002, inserted by section 19 of the Immigration Act 2014. This means that when considering Article 8 great weight should now be given to Parliament's view of the public interest.

### 9.3. Decision to grant leave to remain outside the Immigration Rules on the basis of exceptional circumstances

Where an applicant under the family and private life Rules falls to be granted leave to remain because exceptional circumstances apply in their case, they should be granted leave outside the Rules.

Where leave outside the Rules is being granted on the basis of Article 8 family life, then the provisions of [paragraphs GEN.1.10 to GEN.1.11 of Appendix FM](#) apply. Leave outside the Rules in this case will normally be granted for a period of 30 months.

Where leave outside the Rules is being granted on the basis of Article 8 private life, then the provisions of [paragraphs 276A00 and 276BE\(2\) of Part 7](#) apply. Leave outside the Rules in this case will normally be granted for a period of 30 months.

Under [paragraph GEN.1.11A](#), for family life, and [paragraph 276A02](#) for private life, the grant of leave will be subject to a condition of **no recourse to public funds**, unless the applicant has provided the decision maker with satisfactory evidence that they are destitute, or satisfactory evidence that there are particularly compelling reasons relating to the welfare of a child of a parent in receipt of a very low income. For further guidance on the policy on recourse to public funds, see Section [13](#) of this guidance.

### *Longer grants of leave*

Settlement in the UK is a privilege, not an automatic entitlement. Unless there are truly exceptional reasons, the expectation is that applicants should serve a probationary period of limited leave before being eligible to apply for indefinite leave to remain (ILR) if they meet the requirements.

However, there may be rare cases in which a longer period of leave is considered appropriate, either because it is clearly in the best interests of a child (and any countervailing considerations do not outweigh those best interests), or because there are other particularly exceptional or compelling reasons to grant leave for a longer period (or ILR).

If the applicant specifically requests a longer period of leave than 30 months, or ILR, and provides reasons as to why they think a longer period of leave or ILR is appropriate in their case, the decision maker must consider this. See Section [11.3](#) of this guidance for information on how to make this decision if the applicant is a child or a parent.

In cases not involving children (as the main applicant or as dependants), 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' leave to remain.

In all cases the onus is on the applicant to provide evidence as to why they believe that a longer period of leave (or ILR) is necessary and justified on the basis of particularly exceptional or compelling reasons. Where the decision maker considers that a longer period of leave may be justified the case must be referred to a senior caseworker for further consideration. If the decision maker decides that the case is not sufficiently exceptional or compelling, they should grant 30 months' leave outside the Rules, and explain in the decision letter why this has been granted.

If the applicant does not make a request for a longer than standard period of leave, or if they make a request without providing any reasons for why a longer grant of leave is appropriate, the decision maker should grant 30 months' leave outside the Rules.

Where leave outside the Rules is being granted for Article 8 family or private life reasons, this grant of leave will be subject to a condition of **no recourse to public funds**, unless the applicant meets the policy on when such a condition should not be applied. That will generally only be where the applicant is destitute, or where there are particularly compelling reasons relating to the welfare of a child of a parent in receipt of a very low income. For further guidance on the policy on recourse to public funds, see Section [13](#) of this guidance.

### *Further leave and indefinite leave to remain applications*

The applicant should be advised that they may be eligible to make a valid application for further leave to remain outside the rules, on the basis of the same or other exceptional circumstances, shortly before the initial period of 30 months' leave to remain is due to expire. After 10 years' continuous leave they can apply for indefinite leave to remain under the 10-year long residence route, if they qualify for it. For a grant of further leave to remain on the basis of exceptional circumstances, the applicant will need to qualify under the policy in force at the time.

## 9.4. Decision to refuse leave to remain outside the Immigration Rules

If, following a full consideration of the circumstances of the case, it is judged that there are no exceptional circumstances that warrant a grant of leave outside the Rules, the application should be refused and this must be explained in full in the decision letter.

The decision maker must set out in the decision letter:

- details of the specific circumstances which have been raised and which have been considered;
- reasons why the circumstances are not considered exceptional, taking into account the best interests of any child in the UK; and
- a concluding statement that the application does not fall for a grant of leave outside the Rules.

Guidance on refusal wordings for exceptional circumstances can be found at Annex [A8](#) to this guidance.

[Back to Contents](#)

# 10. Compassionate Factors

## 10.1. Overview

Compassionate factors are compelling compassionate reasons on a basis other than family or private life under Article 8, which might justify a grant of leave to remain outside the Immigration Rules, even though the applicant has failed to meet the requirements of the Rules and there are no exceptional circumstances in their case. While exceptional circumstances on the basis of Article 8 must be considered in every case falling for refusal under the Rules, compassionate factors only need to be considered if they are specifically raised by the applicant.

Compassionate factors are, broadly speaking, exceptional circumstances, e.g. relating to serious ill health, which might mean that a refusal of leave to remain would result in unjustifiably harsh consequences for the applicant or their family, but not constitute a breach of Article 8.

In considering compassionate factors, the decision maker 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)

Decision makers should ensure that where an applicant is granted limited leave to remain on the basis of compassionate factors, the decision letter and associated status documentation clearly show that the grant has been given outside the Immigration Rules on the basis of compassionate factors, and should not indicate that the grant is on the basis of their family or private life.

# 11. Best Interests of a Child

## 11.1. Overview

This section sets out the factors to be considered when assessing a child's best interests under the family and private life Immigration Rules. In particular, it provides instructions on how to assess whether it would be reasonable to expect a child to leave the UK when considering:

- [paragraph EX.1. of Appendix FM](#); and
- [paragraph 276ADE\(1\) of Part 7](#).

It also provides guidance in Section 11.3 on how to consider a child's best interests when assessing whether there are exceptional circumstances in a case which warrant a grant of leave outside the Immigration Rules.

[Paragraph EX.1.\(a\)](#) sets out the criteria to be applied, together with other requirements of the Rules, in assessing whether to grant leave to an applicant who is a parent (or primary carer) on the basis of their family life with a child in the UK, and states:

- (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) it would not be reasonable to expect the child to leave the UK;

[Paragraph 276ADE\(1\)\(iv\)](#) sets out the criteria to be applied, together with the other requirements of the Rules, in assessing whether to grant leave to an applicant who is under the age of 18 on the basis of their private life, and states:

- (iv) is under the age of 18 years and has lived continuously in the UK for at least 7 years (discounting any period of imprisonment) and it would not be reasonable to expect the applicant to leave the UK;

The decision maker must carefully consider the application to determine whether [paragraph EX.1.\(a\)](#) applies and/or whether the requirements in [paragraph 276ADE\(1\)\(iv\)](#) are met.

The decision maker must carefully consider all of the points raised in the application, including any exceptional circumstances. The decision maker should carefully assess the quality of any evidence provided. Decisions must not be taken simply on the basis of assertions about the best interests of the child. All the relevant factors need to be assessed in the round.

The requirements in paragraph EX.1.(a) and in paragraph 276ADE(1)(iv) 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 who are in the UK, by which we mean their best interests, as reflected in case law, in particular, ZH (Tanzania).

The decision maker must have regard to the best interests of the child as a primary consideration (but not the only or the paramount consideration). Primary does not mean that the best interests of the child have to be considered first, before other factors. What matters is that there is a full consideration of the child's best interests and that this is properly explained in the decision letter.

## 11.2. Factors to consider

The decision maker must consider the following factors, where relevant:

### 11.2.1. Is there a genuine and subsisting parental relationship?

Where the application is being considered under paragraph EX.1.(a) in respect of the 10-year partner or parent routes, the decision maker must decide whether the applicant has a "genuine and subsisting parental relationship" with the child. This will be particularly relevant to cases where the child is the child of the applicant's partner, or where the parent is not living with the child.

The phrase goes beyond the strict legal definition of parent, reflected in the definition of "parent" in paragraph 6 of the Immigration Rules, to encompass situations in which the applicant is playing a genuinely parental role in a child's life, whether that is recognised as a matter of law or not.

This means that an applicant living with a child of their partner and taking a step-parent role in the child's life could have a "genuine and subsisting parental relationship" with them, even if they had not formally adopted the child, but only if the other biological parent played no part in the child's life, or there was extremely limited contact between the child and the other biological parent. But in a case where the other biological parent continued to maintain a close relationship with the child, even if they were not living with them, a new partner of the other biological parent could not normally have a role equating to "a genuine and subsisting parental relationship" with the child.

In considering whether the applicant has a "genuine and subsisting parental relationship" the following factors are likely to be relevant:

#### **Does the applicant have a parental relationship with the child?**

- what is the relationship – biological, adopted, step child, legal guardian? Are they the child's de facto primary carer?
- is the applicant willing and able to look after the child?
- are they physically able to care for the child?

Unless there were very exceptional circumstances, we would generally expect that only two people could be in a parental relationship with the child.

#### **Is it a genuine and subsisting relationship?**

- does the child live with the person?
- where does the applicant live in relation to the child?
- how regularly do they see one another?
- are there any relevant court orders governing access to the child?

- is there any evidence provided within the application as to the views of the child, other family members or social work or other relevant professionals?
- to what extent is the applicant making an active contribution to the child's life?

**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 in nature;
- support is only financial in nature; there is no contact or emotional support; and/or
- the child is largely independent of the person.

Other people who spend time with, or reside with the child in addition to their parents, such as their 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.

### **11.2.2. Is the child a British Citizen or have they lived in the UK for a continuous period of at least 7 years?**

The decision maker 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, the decision maker should establish their immigration history in the UK (e.g. 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, the decision maker 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.

### **11.2.3. Would it be unreasonable to expect a British Citizen child to leave the UK?**

Save in cases involving criminality, the decision maker must not take a decision in relation to the parent or primary carer of a British Citizen child where the effect of that decision would be to force that British child to leave the EU, regardless of the age of that child. This reflects the European Court of Justice judgment in Zambrano.

The decision maker must consult the following guidance when assessing cases involving criminality:

- [Criminality Guidance in ECHR Cases](#) (internal)
- [Criminality Guidance in ECHR Cases](#) (external)

Where a decision to refuse the application would require a parent or primary carer to return to a country **outside the EU**, the case must always be assessed on the basis that it would be unreasonable to expect a British Citizen child to leave the EU with that parent or primary carer.

In such cases it will usually be appropriate to grant leave to the parent or primary carer, to enable them to remain in the UK with the child, provided that there is satisfactory evidence of a genuine and subsisting parental relationship.

It may, however, be appropriate to refuse to grant leave where the conduct of the parent or primary carer gives rise to considerations of such weight as to justify separation, if the child could otherwise stay with another parent or alternative primary carer in the UK or in the EU.

The circumstances envisaged could cover amongst others:

- criminality falling below the thresholds set out in paragraph 398 of the Immigration Rules;
- a very poor immigration history, such as where the person has repeatedly and deliberately breached the Immigration Rules.

In considering whether refusal may be appropriate the decision maker must consider the impact on the child of any separation. If the decision maker is minded to refuse, in circumstances where separation would be the result, this decision should normally be discussed with a senior caseworker and, where appropriate, advice may be sought from the Office of the Children's Champion on the implications for the welfare of the child, in order to inform the decision.

Where the applicant has made an application under the family and/or private life Immigration Rules, the application must:

- a) be considered under those Immigration Rules first;
- b) where the applicant falls for refusal, the decision maker must go on to consider whether there are any exceptional circumstances that would warrant a grant of leave to remain outside the Immigration Rules; and
- c) where the applicant falls for refusal under the Immigration Rules and there are no exceptional circumstances, and where satisfactory evidence has been provided that all of the following criteria are met, the case must be referred to European Casework for review:
  - i. the child is under the age of 18; and
  - ii. the child is a British Citizen; and
  - iii. the primary carer (care responsibilities and court orders are examples of evidence) of the child is a non-EEA national in the UK; and
  - iv. there is no other parent/guardian/carer upon whom the child is dependent or who could care for the child if the primary carer left the UK to go to a country outside the EU.

The originating decision maker **should not** issue a decision on the Immigration Rules application whilst awaiting this Zambrano decision.

The originating decision maker **must not** grant leave outside the Rules because they believe the applicant has a Zambrano right, **but must** instead always refer the case to European Casework for them to review and determine the case under EU law if the criteria above are met.

European Casework will decide whether or not the person has established a right to reside in the UK under EU law, and will notify the originating decision maker of that decision. European Casework will then return the case file to the originating decision maker.

The originating decision maker must then serve the Zambrano decision on the applicant, together with the decision on the original application under the Immigration Rules.

In cases where a decision to refuse the application would require a parent or primary carer to return to a country **within the EU**, it may be possible to require the child to return or go there with that person. However, consideration must still be given to whether it would be reasonable to expect the child to leave the UK.

This issue should be considered in accordance with the criteria in Section [11.2.4](#). of this guidance below, where they apply.

#### **11.2.4. Would it be unreasonable to expect a non-British Citizen child to leave the UK?**

The requirement that a non-British Citizen child has lived in the UK for a continuous period of at least the 7 years immediately preceding the date of application, recognises that over time children start to put down roots and integrate into life in the UK, to the extent that being required to leave the UK may be unreasonable. The longer the child has resided in the UK, the more the balance will begin to swing in terms of it being unreasonable to expect the child to leave the UK, and strong reasons will be required in order to refuse a case with continuous UK residence of more than 7 years.

The decision maker must consider whether, in the specific circumstances of the case, it would be reasonable to expect the child to live in another country.

The decision maker must consider the facts relating to each child in the UK in the family individually, and also consider all the facts relating to the family as a whole. The decision maker should also engage with any specific issues explicitly raised by the family, by each child or on behalf of each child.

Relevant considerations are likely to include:

**a. Whether there would be a significant risk to the child's health**

For example, if there is evidence that the child is undergoing a course of treatment for a life threatening or serious illness and treatment will not be available in the country of return;

**b. Whether the child would be leaving the UK with their parent(s)**

It is generally the case that it is in a child's best interests to remain with their parent(s). Unless special factors apply, it will generally be reasonable to expect a child to leave the UK with their parent(s), particularly if the parent(s) have no right to remain in the UK;

**c. The extent of wider family ties in the UK**

The decision maker 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 his or her life;

**d. Whether the child is likely to be able to (re)integrate readily into life in another country. Relevant factors include:**

- whether the parent(s) and/or child are a citizen of the country and so able to enjoy the full rights of being a citizen in that country;
- whether the parent(s) and/or child have lived in or visited the country before for periods of more than a few weeks. The question here is whether, having visited or lived in the country before, the child would be better able to adapt, and/or the parent(s) would be able to support the child in adapting, to life in the country;
- whether the parent(s) and/or child have existing family or social ties with the country. 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 (re)integrate there;
- whether the parent(s) and/or child have relevant cultural ties with the country. The caseworker 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 mainly amongst a diaspora from the country may give a child an awareness of the culture of the country;
- whether the parents and/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;
- whether the child has attended school in that country.

**e. Any country specific information, including as contained in relevant country guidance**

**f. Other specific factors raised by or on behalf of the child.**

Parents or children may highlight the differences in the quality of education, health and wider public services or in economic or social opportunities between the UK and the country of return and argue that these would work against the best interests of the child if they had to leave the UK and live in that country. Other than in exceptional circumstances, this will not normally be a relevant consideration, particularly if the parent(s) or wider family have the means or resources to support the child on return or the skills, education or training to provide for their family on return, or if Assisted Voluntary Return support is available.

### **11.3. Exceptional circumstances relating to a child's best interests**

Where the applicant does not meet the requirements of the family and private life Rules, refusal of the application will normally be appropriate, but in every case falling for refusal under the Rules the decision maker must consider whether there are exceptional circumstances warranting a grant of leave to remain outside the Rules. Occasionally these exceptional circumstances will be obvious, but generally it is for the applicant to raise them.

The decision maker must consider any particular circumstances apparent or raised in respect of a child's best interests and consider whether refusal/return is still appropriate in light of these. In some cases it may be appropriate to grant leave on a short-term temporary basis to enable particular issues relating to the child's welfare to be addressed before they leave the UK.

"Exceptional" does not mean "unusual" or "unique". Whilst all cases are to an extent unique, those unique factors do not generally render them exceptional. Furthermore, a case is not exceptional just because the requirements of family and/or private life Immigration Rules have been missed by a small margin. Instead, "exceptional" means circumstances in which refusal would result in unjustifiably harsh consequences for the applicant or their family, such that refusal of the application would not be proportionate. That is likely to be the case only rarely.

The decision maker should take into account any order made by the Family Court, 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. The decision maker does 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.

For additional guidance on exceptional circumstances, see Section [9](#) of this guidance. Guidance on refusal wordings for exceptional circumstances, including in cases involving children, can be found at Annex [A8](#) to this guidance.

### **11.3.1. Decision to grant leave to remain outside the Immigration Rules on the basis of exceptional circumstances relating to a child's best interests**

Where an applicant falls to be granted leave to remain because exceptional circumstances apply in their case, they should be granted leave outside the Rules.

Where leave outside the Rules is being granted on the basis of Article 8 family life, then the provisions of [paragraphs GEN.1.10. – GEN.1.11. of Appendix FM](#) apply. Leave outside the Rules in this case will normally be granted for a period not exceeding 30 months, unless the grant of leave is being made on a short-term temporary basis only, to enable particular issues relating to a child's welfare to be addressed before they leave the UK.

Where leave outside the Rules is being granted on the basis of Article 8 private life, then the provisions of [paragraphs 276A00 and 276BE\(2\) of Part 7](#) apply. Leave outside the Rules in this case will be granted for a period not exceeding 30 months, unless the grant of leave is being made on a short-term temporary basis only, to enable particular issues relating to a child's welfare to be addressed before they leave the UK.

An applicant with leave outside the rules on Article 8 grounds may apply for further leave if they continue to qualify under the relevant policy in force at the time, and can apply for settlement on the basis of the 10-year long residence route if they qualify for it.

If the grant of leave is being made on a short-term temporary basis, a shorter period of leave should be granted, appropriate to the circumstances of the case.

The decision maker must also have regard to the best interests of the child as a primary consideration (but not the only or the paramount consideration) when deciding the period of leave to be granted.

Whilst the expectation is that a period of 30 months' (2.5 years') leave will generally be appropriate, there may be cases where evidence is provided demonstrating that a longer period of limited leave (or indefinite leave to remain (ILR)) is required in order to reflect the best interests of the individual child under consideration. A longer period of leave can be granted where the child meets the requirements of the rules (in which case they would be granted leave outside the rules for a longer period than 30 months) or where they fail to meet the requirements of the rules but there are exceptional circumstances in their case that warrant a grant of leave outside the Rules.

There is discretion to grant a longer period of leave where appropriate. There may be cases where a longer period of leave outside the Rules is considered appropriate, either because it is clearly in the best interests of a child (and any countervailing considerations do not outweigh those best interests), or because there are other particularly exceptional or compelling reasons to grant limited leave for a longer period, or to grant ILR. The onus is on the applicant to establish that the child's best interests would not be met by a grant of 30 months' leave to remain and that there are compelling reasons that require a different period of leave to be granted. This means that the decision maker should only consider whether to grant a longer period of leave or ILR if (a) the applicant has specifically asked for this, and (b) they have provided their reasons for why they think a longer period of leave or ILR is appropriate.

In considering the period of leave to be granted, factors such as the length of residence in the UK, whether the child was born in the UK and strong evidence to suggest that the child's life would be adversely affected by a grant of limited leave rather than ILR are relevant. The conduct of the child's parent(s) or primary carer and their immigration history, and the public interest in maintaining fair, consistent and coherent immigration controls, are all relevant considerations as to the length of leave granted.

Where the parent(s) or primary carer already has leave, or where their application is being decided first, the period of leave granted to the parent or primary carer is relevant to the assessment of what period of leave to grant the child. Whilst it will usually be in the child's best interests to have leave in line with their parent(s) or primary carer, the decision maker should take into account any particularly compelling factors which may warrant a longer period of leave. It should be borne in mind that the child is not responsible for the conduct or immigration history of their parent(s) or primary carer.

An example of a case where it might be appropriate to grant a child ILR might be where the child had a serious and chronic medical condition which might not be able to be treated in the country of return and it was considered in their best interests to grant the child ILR to provide a greater degree of certainty for the purposes of their continued treatment or mental well-being. However, the threshold is high and concerns the direct effect on the person rather than simply their age.

An example of where it would not normally be appropriate to grant a child ILR might be because they would like to qualify for a student loan in order to go to university. This would not normally be sufficiently exceptional or compelling unless there were additional factors. An applicant in this position may be aged 18 or over, and therefore no longer a child. They would not be prevented from going to university by a grant of limited leave – rather they would be

unable to access student loans which are only available to certain categories, including those settled in the UK, refugees and those granted Humanitarian Protection, and EU nationals. Some universities may have other types of funding which they could apply for, such as student bursaries, scholarships or other types of student support or fee waiver; as do some commercial companies and charities. Higher Education Institutions also have the discretion to treat an “overseas” student as a home student and charge them the home student tuition fee, which is usually lower. A grant of limited leave will give the applicant permission to work and they could choose to seek employment in order to save up the relevant funds before they attend university, study part time and work part time to fund their course, or wait until they qualify for ILR after 10 years of limited leave and access student loans at that point.

Where a decision is taken to grant ILR to a child because it is considered to be in their best interests, this does not necessarily mean that the parent(s) or primary carer should be granted ILR in line. It will normally be appropriate to grant a period of limited leave of 30 months to the parent(s) or primary carer unless they can demonstrate exceptional and compassionate circumstances in their own right that warrant departure from this policy.

In all cases, the onus is on the applicant (or their representative) to provide evidence as to why it is in the best interests of the child to be granted a period of leave outside the rules that is longer than 30 months. Where a decision maker considers that there are exceptional circumstances that mean it is in the best interests of the child to depart from the policy of granting 30 months’ leave to remain, the case must be referred to a senior caseworker for further consideration.

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

Under [paragraph GEN.1.11A](#), for family life, and [paragraph 276A02](#) for private life, a grant of leave outside the Rules (of any length) will be subject to a condition of **no recourse to public funds**, unless the applicant has provided the decision maker with satisfactory evidence that they are destitute, or satisfactory evidence that there are particularly compelling reasons relating to the welfare of a child of a parent in receipt of a very low income. For further guidance on the policy on recourse to public funds, see Section [13](#) of this guidance.

The applicant should be advised that they may be eligible to make a valid application for further leave to remain outside the Rules, on the basis of the same or other exceptional circumstances, shortly before their initial period of limited leave is due to expire. After 10 years’ continuous leave they can apply for indefinite leave to remain under the 10-year long residence route, if they qualify for it.

### 11.3.2. Decision to refuse leave to remain outside the Immigration Rules

If, following a full consideration of the circumstances of the case, it is judged that there are no exceptional circumstances that would warrant a grant of leave outside the Rules, the application should be refused and this must be explained in full in the refusal notice.

The decision maker must set out in the decision letter:

- details of the specific circumstances that have been raised and which have been considered;
- reasons why the circumstances are not considered exceptional, taking into account the best interests of the child; and
- a concluding statement that the application does not fall for a grant of leave outside the Rules.

Guidance on refusal wordings for exceptional circumstances can be found at Annex [A8](#) of this guidance.

[Back to Contents](#)

## 12. Decisions in Cases Where a Valid Application is Not Required

### 12.1. When a valid application is not required

A valid application is not required when the Article 8 family and/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; or
- in an appeal (subject to the consent of the Secretary of State where applicable).

Where a valid application is not required, as set out above and in [paragraph GEN.1.9. of Appendix FM](#) and [paragraph 276A0 of Part 7](#) of the Immigration Rules, the decision maker should consider the case under the relevant rules in Appendix FM and/or paragraph 276ADE(1) – 276DH.

Those who have a claim or wish to make a claim for leave on the basis of Article 8 and who are not required to make a valid application (as defined in [paragraph GEN.1.9. of Appendix FM](#) or [paragraph 276A0 of Part 7](#)) can only be considered for leave to remain on a 10-year route to settlement.

If an applicant 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](#) or [paragraph 276ADE\(1\)](#)) under a 10-year route to settlement without submitting a valid application because they fell within the provisions of [paragraph GEN.1.9. of Appendix FM](#) or [paragraph 276A0 of Part 7](#), 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 [paragraph 276A0](#).

## 12.2. Asylum/Humanitarian Protection or removal decisions

### 12.2.1. Asylum/Humanitarian Protection claims

Where a person has made a claim for asylum or humanitarian protection, the Immigration Rules in paragraphs [276A0 of Part 7](#), [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/or private life route in paragraphs 276ADE(1) - 276DH of the Immigration Rules.

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

### 12.2.2. Article 8 claims made while in immigration detention pending removal

Paragraphs [276A0 of Part 7](#) 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/or the private life route in paragraphs 276ADE(1)-276(DH), by virtue of [paragraph 400 of Part 13 of the Immigration Rules](#).

### 12.2.3. Consideration of an Article 8 claim in Asylum/Humanitarian Protection and removal decisions

The decision maker dealing with asylum/humanitarian protection or removal cases highlighted above 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/or the 10-year private life route under paragraph 276ADE(1).

Where the requirements are met, the decision maker may grant leave to remain for a period of 30 months, under the relevant route.

Under [paragraph GEN.1.11A of Appendix FM](#) for family life, and [paragraph 276A02](#) for private life, the grant of leave will be subject to a condition of **no recourse to public funds**, unless the applicant has provided the decision maker with satisfactory evidence that they are destitute, or satisfactory evidence that there are particularly compelling reasons relating to the welfare of a child of a parent in receipt of a very low income. See Section [13](#) of this guidance for the policy on recourse to public funds.

The applicant will be eligible to apply for indefinite leave to remain (settlement) after 120 months if they qualify.

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 Article 8 claim is refused, the decision maker should refuse leave to remain under paragraph D-LTRP.1.3. or D-LTRPT.1.3. of Appendix FM and/or under paragraph 276CE.

If the requirements of the 10-year partner or parent routes in Appendix FM and/or paragraphs 276ADE(1)-DH on private life are not met, the decision maker 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 or their family, such that refusal of the application would not be proportionate.

The decision maker should refer to Sections [9](#) and [11](#) of this guidance for further information on exceptional circumstances and the best interests of the child. If there are exceptional circumstances, the applicant should be granted leave outside the rules in line with Sections [9](#) and [11](#) of this guidance.

If after considering the case the Article 8 claim is refused, any reasons for refusal letter must explain why the requirements of the family and/or private life rules have not been met.

It must also fully explain the consideration of exceptional circumstances, outlining the consideration given, and must explain why it is not considered that there are any exceptional circumstances in this case.

## 12.3. Appeals

### 12.3.1. Appeals against refusal under the family and/or private life Rules

If an appeal is allowed on the basis that the appellant qualified for leave under the family or private life Rules, and where the Home Office is not pursuing the case further in court, then leave should be granted under the relevant Rules.

If an appeal is allowed on the basis that the appellant does not qualify under the family or private life Rules, but there are exceptional circumstances which mean refusal or removal would be a breach of Article 8, and where the Home Office is not pursuing the case further in court, the appellant should be granted leave to remain outside the Rules for a period of 30 months.

The applicant may be eligible to apply for indefinite leave to remain (settlement) after 120 months if they qualify.

The decision maker should refer to Sections 9, [10](#) and [11](#) of this guidance for further information on exceptional circumstances and the best interests of the child.

### 12.3.2. Appeals against refusal under any other Part of the Rules

Where an appellant raises Article 8 at appeal having made a valid application under Rules other than those for family or private life, the decision maker is not generally expected to consider the Article 8 claim under the family or private life rules prior to an appeal hearing.

Presenting Officers must consider whether to defend or concede the appeal. If the appeal continues and is allowed, it will only progress to a grant of leave if we do not challenge the appeal decision.

Where an appeal against refusal of an application under PBS has been allowed on Article 8 grounds which relate to the initial application, e.g. a refusal of a student application is held to be a breach of Article 8 because the student would be unable to complete their course, the appellant should be granted leave outside the rules of the same type and duration, and on the same conditions, as if the relevant PBS application had been granted.

Where an appeal has been allowed because it is held that the appellant has family or private life in the UK which would make removal a breach of Article 8, e.g. because the appellant does not meet the student rules but they have a British citizen or settled partner here and they meet the requirements of the 10-year partner route under Appendix FM, the appellant should be granted leave under the relevant family or private life rules for a period of 30 months.

If the appeal has been allowed because it is held that there are exceptional circumstances which would make the appellant's removal a breach of Article 8, the appellant should be granted leave outside the rules for a period of 30 months, in line with the guidance at Sections [9](#) and [11](#).

### 12.3.3. Judicial Reviews

If a claimant wins their Judicial Review of a refusal of an application under the 10-year partner, parent or private life routes, they should be granted 30 months' leave under that 10-year route. They may be eligible to apply for indefinite leave to remain (settlement) after 120 months if they qualify.

If a claimant wins their Judicial Review of a refusal of an application under PBS on Article 8 grounds which relate to the initial application, e.g. a refusal of a student application is held to be a breach of Article 8 because the student would be unable to complete their course, the claimant should be granted leave outside the rules of the same type and duration and on the same conditions as if the relevant PBS application had been granted.

If a claimant wins their Judicial Review because it is held that they have family or private life in the UK which would make removal a breach of Article 8, e.g. because the claimant does not meet the student rules but they have a British citizen or settled partner here and they meet the requirements of the 10-year partner route under Appendix FM, the claimant should be granted leave under the relevant family or private life rules for a period of 30 months.

If a claimant wins their Judicial Review because it is held that there are exceptional circumstances which would make their removal a breach of Article 8, the claimant should be granted leave outside the rules for a period of 30 months in line with the guidance at Sections [9](#) and [11](#).

[Back to Contents](#)

## 13. No Recourse to Public Funds

### 13.1. General

Those seeking to establish their family life in the UK must do so on a basis that prevents burdens on the taxpayer and promotes integration. The changes to the Immigration Rules implemented on 9 July 2012 are predicated in part on safeguarding the economic well-being of the UK, which is a legitimate aim under Article 8 of the ECHR (the right to respect for private and family life) for which necessary and proportionate interference in Article 8 rights can be justified.

This approach now carries the full weight of primary legislation, under Part 5A of the Nationality, Immigration and Asylum Act 2002, inserted by section 19 of the Immigration Act 2014 and implemented on 28 July 2014. This sets out public interest considerations concerning the maintenance of effective immigration controls and other considerations, which apply where a court or tribunal is considering whether a decision made under the Immigration Acts breaches a person's right to respect for private and family life under Article 8. In particular, it sets out in section 117B(3) of the 2002 Act that:

“It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons—

- a) are not a burden on taxpayers, and
- b) are better able to integrate into society.”

The Immigration Rules approved by Parliament govern the no recourse to public funds policy in grants of leave made under the 10-year partner, parent and private life routes under the Rules and in grants of leave made outside the Rules under ECHR Article 8 on the basis of exceptional circumstances. Grants of leave under the 5-year partner or parent routes are always subject to a condition of no recourse to public funds.

Paragraphs 276A00, 276A02, 276BE(1), 276BE(2) and 276DG govern the condition codes imposed in grants of leave for private life reasons, and paragraphs GEN 1.10, GEN.1.11, GEN.1.11A, D-LTRP.1.2, D-ILRP.1.3, D-LTRPT.1.2, D-ILRPT.1.3 of Appendix FM govern the condition codes imposed in grants of leave for family life reasons, under the 10-year partner, parent and private life routes under the Immigration Rules or outside the Rules under ECHR Article 8 on the basis of exceptional circumstances.

### 13.2. Criteria for the non-imposition or lifting of the no recourse to public funds condition code

In all cases where:

- limited leave is granted on a 10-year route as a partner or parent under Appendix FM;
- limited leave on the grounds of private life is granted under paragraph 276BE(1) or paragraph 276DG; or
- limited leave is granted outside the Rules on the basis of exceptional circumstances relating to family life under GEN.1.10-1.11. of Appendix FM or to private life under paragraph 276BE(2),

leave will be granted subject to a condition of no recourse to public funds, unless the applicant meets the terms of this policy. The condition of no recourse to public funds will not be imposed, or will be lifted, only where the applicant meets the requirements of paragraph GEN.1.11A of Appendix FM or paragraph 276A02 of the Immigration Rules in that:

1. the applicant has provided satisfactory evidence that they are destitute; or
2. the applicant has provided satisfactory evidence that there are particularly compelling reasons relating to the welfare of a child on account of the child's parent's very low income; or
3. the decision maker exercises discretion not to impose, or to lift, the no recourse to public funds condition code because the applicant has established exceptional circumstances in their case relating to their financial circumstances which, in the view of the decision maker, require the no recourse to public funds condition code not to be imposed or to be lifted.

The decision maker must consider all relevant personal and financial circumstances raised by the applicant, and any evidence of these which they have provided.

Whether to grant leave subject to a condition of no recourse to public funds, and whether to lift that condition where imposed, is a decision for the Home Office decision maker to make on the basis of this guidance.

### 13.3. Destitution

Consistent with the provision of support to asylum seekers and their dependants under section 95 of the Immigration and Asylum Act 1999, a person is destitute if:

- a) They do not have adequate accommodation or any means of obtaining it (whether or not their other essential living needs are met); or
- b) They have adequate accommodation or the means of obtaining it, but cannot meet their other essential living needs.

There are no fixed monetary values attached to the destitution test in this context. This means that the decision maker can take account of the applicant's individual circumstances in reaching their decision. What constitutes "adequate accommodation" and "essential living needs" and the costs of these may be different in different cases, depending, for example, on whether the applicant is supporting any dependants and, if so, their number, age and needs; the part of the UK the applicant lives in; whether the applicant or any dependants have a disability which requires adjustments to be made to their accommodation, etc.

If the applicant or any dependants have a physical or mental disability, this is not in itself determinative of the assessment under this policy, but it is relevant to this assessment insofar as it affects the applicant's financial circumstances. This may be true of other personal characteristics of the applicant or any dependants. All of the information and evidence provided about the applicant's individual circumstances (including those of any dependent family members) must be taken into account by the decision maker in order to consider their financial position and whether the applicant meets the requirements of this policy for the no recourse to public funds condition not to be imposed or to be lifted.

Where the decision maker believes that the issue of disability may be material to the decision and there is insufficient information in this respect on which to base their decision, they may invite the applicant to submit further information or evidence. The applicant will need to establish any disability (or that of a dependent family member) by means of independent documentary evidence, such as a letter from a hospital consultant. If there is evidence that the applicant has special needs and may need assistance to present their case clearly, the decision maker can signpost them to other agencies who may be able to assist, such as Citizens Advice. Details of the applicant's local branch of Citizens Advice are available here: <http://www.citizensadvice.org.uk/>

Where an applicant is supported under section 95 or section 4 of the Immigration and Asylum Act 1999, they will already have been assessed as destitute. The decision maker may, where granting leave under the 10-year partner or parent route in Appendix FM or the 10-year private life route in paragraphs 276ADE(1)-276DH of the Immigration Rules, apply condition code 1A allowing recourse to public funds, where it is clear that there has been no change in the applicant's financial circumstances since the last assessment of destitution which would affect their eligibility for support. However, the decision maker should take into account that the applicant will now have the right to work if they did not before.

Where support under section 95 or section 4 of the 1999 Act has been discontinued, the applicant will need to produce evidence of their financial position and accommodation arrangements since then.

Where an applicant and their family are in receipt of support from a Local Authority, the Local Authority will have conducted its own assessment of the applicant's circumstances before making a decision to grant support. However, the receipt of such support does not in itself evidence destitution and a decision maker must make their own assessment of the information and evidence that the applicant has provided. Local Authority support is subject to the relevant statutory criteria, e.g. under section 17 of the Children Act 1989 (for a child in need and their family) or section 21 of the National Assistance Act 1948 (provision of accommodation in certain circumstances). An applicant in receipt of Local Authority support may or may not meet the criteria set out in this guidance depending on their circumstances.

Examples of cases where we might reach a different conclusion from the Local Authority on the question of whether or not the applicant was destitute, or whether or not there were particularly compelling child welfare considerations, could be where:

- the applicant was working and receiving an income which the Local Authority supplemented to reflect its section 17 responsibilities; or
- the applicant had the right to work and prospects of employment which it was clear the Local Authority had not considered; or
- the applicant's prospects had changed since the Local Authority assessment.

In all cases the decision maker must consider the applicant's financial circumstances, on the basis of the information and evidence provided, to determine whether they are destitute, or whether there are particularly compelling reasons relating to the welfare of a child of a parent in receipt of a very low income or other exceptional circumstances, under the terms of this guidance.

The onus is on the applicant to evidence their destitution, or that there are particularly compelling child welfare considerations or other exceptional circumstances, on the basis of the information set out in their application and any supplementary information or evidence about their circumstances which they provide in support of their application.

In considering the applicant's financial circumstances, the decision maker should have in mind that:

- those granted limited leave to remain under the Immigration Rules as a partner or parent or on the grounds of private life, or those granted leave outside the Rules under ECHR Article 8 on the basis of exceptional circumstances, will be free to work in the UK and are expected to support themselves through work rather than through recourse to public funds. The decision maker should consider any information provided by the applicant about their current or prospective employment and/or that of their partner or parent.
- where the applicant is granted limited leave to remain as a partner, their partner is expected to support them and, if their partner is a British Citizen or settled in the UK, that person will have recourse to any public funds to which their circumstances qualify them. It should therefore be extremely rare for the applicant to be destitute.
- where the applicant is granted limited leave to remain as a parent, the decision maker should take into account any information provided by the applicant about the availability of child maintenance and whether they have sought this, and whether they are entitled to claim any benefits such as child benefit.
- where the applicant is granted limited leave to remain on the grounds of private life, they will generally have lived in the UK for a significant period. Where the applicant is granted limited leave to remain as a parent, they will also have lived in the UK for a period before applying for leave under these rules. To show that they meet the terms of this policy, the applicant will have to demonstrate good reasons (by means of evidence) as to why their previous means of support are no longer available to them.

The applicant will need to provide evidence, including of their financial position, demonstrating that, on an ongoing basis, they do not have access to adequate accommodation or any means of obtaining it, they cannot meet their other essential living needs, or there are particularly compelling child welfare considerations on account of their parent's very low income or other exceptional circumstances.

### **13.4. Making a decision on the condition code**

The onus is on the applicant to provide all of the information and evidence which they would like the decision maker to consider.

Where the decision maker decides that, even though they now have the right to work if they did not before, the applicant is destitute (including accepting that any previous means of support are no longer available), that there are particularly compelling circumstances relating to the welfare of a child on account of their parent's very low income or that there are other exceptional circumstances, the decision maker should not impose or should lift the no recourse to public funds condition code (condition code 1) and apply condition code 1A allowing recourse to public funds, when granting leave, or varying its conditions, under the 10-year partner or parent route in Appendix FM or the 10-year private life route in paragraphs

276ADE(1)-276DH of the Immigration Rules, or leave outside the Rules under ECHR Article 8 on the basis of exceptional circumstances.

An applicant granted leave which is not subject to the no recourse to public funds condition code, or who has the no recourse to public funds condition code lifted, will still have to meet the relevant eligibility criteria for any welfare benefit for which they apply.

If the applicant wishes to provide additional information or evidence in support of their application for the no recourse to public funds condition to be lifted, or if their circumstances change and they wish to apply for the no recourse to public funds condition to be lifted, they may use our published process for requesting a change of condition code. This process is free of charge and may be found here:

- [Application for change of condition of leave to allow access to public funds if your circumstances change](#)

### **13.5.Subsequent leave to remain applications**

When an applicant who was granted leave to remain without the no recourse to public funds condition code at the initial grant of leave, or has had that condition code lifted, applies for further leave to remain, they will be re-assessed and only granted further leave without the no recourse to public funds condition code if they continue to meet the terms of the policy that applies at the relevant time.

### **13.6.Grants of leave to remain under earlier public funds policies**

In light of the Upper Tribunal judgment in Fakhri in November 2014, where, prior to 28 July 2014, an applicant has either been granted leave to remain under the 10-year partner, parent or private life routes under the Immigration Rules, or been granted leave to remain outside the Rules under ECHR Article 8 on the basis of exceptional circumstances, and this leave was granted subject to a condition of no recourse to public funds, the applicant may seek a reconsideration of the condition code attached to their leave by making an application under the published process for requesting a change of condition code. This process is free of charge and may be found here:

- [Application for change of condition of leave to allow access to public funds if your circumstances change](#)

[Back to Contents](#)

## 14. Case Information Database (CID)

Applications for a Consideration of Article 8 Family and/or Private Life (10-year routes)		
Case Type	Case Outcomes	Statistics Categories
<b>FPVLTR</b> Family & Private Life 10yr - LTR	<b>1000275</b> Grant Family/Private LTR	<b>U3</b> Family/Private extn - Child's best interest <i>[EX.1.(a)]</i>
		<b>U4</b> Family/Private extn - Private Life
		<b>U5</b> Family/Private extn - Breach of Article 8 Family <i>[EX.1.(b)]</i>
	<i>All Refusal Case                      Outcomes</i>	<b>UA</b> Refused Extn - Private Life Criminality
		<b>UB</b> Refused Extn - Family Life Criminality
		<b>UC</b> Refused Extn - Private Life not engaged
		<b>UD</b> Refused Extn - Family Life not engaged
		<b>UE</b> Refused Extn - Private Life Circs no longer apply
		<b>UF</b> Refused Extn - Family Life Circs no longer apply

<b>Article 8 Family and/or Private Life Considered Following an Application in Another Route</b>		
<b>Case Type</b>	<b>Case Outcomes</b>	<b>Statistics Categories</b>
<i>All Limited Leave to Remain Case Types</i>	<b>1000275</b> Grant Family/Private LTR	<b>U3</b> Family/Private extn - Child's best interest [EX.1.(a)]
		<b>U4</b> Family/Private extn - Private Life
		<b>U5</b> Family/Private extn - Breach of Article 8 Family [EX.1.(b)]
<i>All Indefinite Leave to Remain Case Types</i>	<b>1000175</b> Refuse ILR, Grant Family/Private LTR	<b>U3</b> Family/Private extn - Child's best interest [EX.1.(a)]
		<b>U4</b> Family/Private extn - Private Life
		<b>U5</b> Family/Private extn - Breach of Article 8 Family [EX.1.(b)]
<i>All Asylum Case Types</i>	<b>1000375</b> Refuse Asylum, Grant Family LTR	N/a
	<b>1000376</b> Refuse Asylum, Grant Private LTR	N/a

[Back to Contents](#)

# Annex A - Refusal Paragraphs

## A1. General

This section contains suggested wordings for refusals on the basis of family life on the basis of a partner in the UK, Private Life in the UK and exceptional circumstances. These are examples and they do not constitute an exhaustive list of possible refusal paragraphs.

The decision maker is expected to include in a decision letter the refusal introduction paragraphs reflecting the consideration of each of the family and private life rules and relevant refusal paragraph(s), followed by paragraphs to reflect the consideration of exceptional circumstances. Therefore the decision letter should include a combination of paragraphs from each relevant section.

## A2. Refusal Introduction

The paragraphs below should be used in **ALL** decision letters, to introduce the decision on the basis of family and private life in the UK under Appendix FM and paragraphs 276ADE(1)-DH, and exceptional circumstances:

“You applied on [insert date] for leave to remain in the United Kingdom on the basis of your [family and/or private] life in the UK. Your application has been considered under [Appendix FM to and/or paragraphs 276ADE(1) – DH of] the Immigration Rules.”

The introduction should be followed by a full and detailed explanation of the reasons for refusal, which can include the example paragraphs in the following sections.

## A3. Concluding Refusal Paragraph

The decision maker should conclude their decision under the Immigration Rules, by ensuring they list in the decision letter **ALL** paragraphs of the rules that an applicant is being refused under as follows:

“Your application on the basis of [state what applied for] is refused under [state relevant decision paragraphs e.g. paragraph D-LTRP.1.3., D-LTRPT.1.3. and 276CE] with reference to [list all requirement paragraphs (including general provisions) the applicant has failed to meet under that rule] of the Immigration Rules.”

## A4. Example Suitability Refusal Paragraphs

**Note:** The following wordings are examples. They do not constitute an exhaustive list of possible refusal paragraphs.

For further guidance on refusal on the basis of Suitability, please refer to the guidance on General Grounds for refusal:

- [General Grounds for Refusal](#) (internal link)
- [General Grounds for Refusal](#) (external Link)

Refusal Reason	Suggested Wording
<b>Fails on basis of deportation order</b>	At the date of application you are/were the subject of a deportation order issued on <b>[insert date of deportation order]</b> . You therefore fail to meet the requirements for leave to remain because paragraph S-LTR.1.2. of Appendix FM of the Immigration Rules applies.
<b>Fails on basis of criminality</b>	See refusal wording in Criminality & General Grounds for Refusal Guidance for leave to remain refusals under S-LTRP.1.3.-1.5: <a href="#">General Grounds for Refusal</a> – internal guidance <a href="#">General Grounds for Refusal</a> – external guidance
<b>Fails on basis of conduct, character and associations or other reasons</b>	Your presence in the UK is not conducive to the public good because <b>[insert reasons why conduct/character/associations/other reasons make it undesirable to grant leave to remain – this could include convictions which do not fall within paragraph S-LTR.1.3-1.5]</b> . You therefore fail to meet the requirements for leave to remain because paragraph S-LTR.1.6. of Appendix FM of the Immigration Rules applies.
<b>Fails on basis of non-compliance</b>	You have failed to <b>[attend an interview/provide information/provide physical data/undergo a medical examination or provide a medical report] (delete as appropriate)</b> . You have stated that <b>[insert any reason given by the applicant for their non-compliance and why this reason is not accepted /or You have provided no reasonable excuse for your failure to comply with this requirement]</b> . You therefore fail to meet the requirements for leave to remain because paragraph S-LTR.1.7. of Appendix FM of the Immigration Rules applies.
<b>Fails on the basis of false representations</b>	<b>[Insert nature of document or date and nature of false representations or information]</b> was submitted in support of your application. This/These <b>[document/information/representations]</b> is/are false <b>[insert basis for assessing document/information is false]</b> . I have considered whether you should nevertheless be granted leave to remain but have concluded that the exercise of discretion is not appropriate on this occasion because <b>[insert reasons]</b> . You therefore fail to meet the requirements for leave to remain because paragraph S-LTR.2.2.(a) of Appendix FM of the Immigration Rules applies.

Refusal Reason	Suggested Wording
<p><b>Fails on basis of failure to disclose material facts</b></p>	<p>In your application, [you or another person] failed to disclose the following facts [state facts]. I am satisfied that these facts were material to the application because [state reasons]. I have considered whether you should nevertheless be granted leave to remain but have concluded that the exercise of discretion is not appropriate on this occasion because [insert reasons]. You therefore fail to meet the requirements for leave to remain because paragraph S-LTR.2.2.(b). of Appendix FM of the Immigration Rules applies.</p>
<p><b>Refused on basis of debts owing to NHS</b></p>	<p>The Secretary of State is satisfied that you have failed to pay an outstanding charge or charges with a total value of at least £1,000 in respect of National Health Service (NHS) treatment that you have received. This is in accordance with the relevant NHS regulations on charges for overseas visitors, based on evidence received from [insert name of relevant NHS body]. [Insert reasons]. I have considered whether you should nevertheless be granted leave to remain but have concluded that the exercise of discretion is not appropriate on this occasion [insert reasons]. You therefore fail to meet the requirements for leave to remain because paragraph S-LTR.2.3. of Appendix FM of the Immigration Rules applies.</p>
<p><b>Fails on the basis of lack of maintenance and accommodation undertaking</b></p>	<p>On [date] a maintenance and accommodation undertaking from [name of sponsor] was requested [under paragraph 35 of the Immigration Rules or otherwise]. No such undertaking has been provided. I have considered whether you should nevertheless be granted leave to remain but have concluded that the exercise of discretion is not appropriate on this occasion because [insert reasons]. You therefore fail to meet the requirements for leave to remain because paragraph S-LTR.2.4. of Appendix FM of the Immigration Rules applies.</p>

## A5. Example Partner Refusal Paragraphs

**Note:** The following wordings are examples. They do not constitute an exhaustive list of possible refusal paragraphs.

Refusal Reason	Suggested Wording
<b>No family life raised</b>	As your representations make no reference to you having a partner or any dependent children under the age of 18 in the UK, you do not meet the requirements of R-LTRP.1.1 (a) or (d), or R-LTRPT.1.1(a) or (d) of Appendix FM of the Immigration Rules. Your application on the basis of family life is therefore refused under paragraph D-LTRP.1.3 with reference to R-LTRP.1.1.(a) and (d) and paragraph D-LTRPT.1.3 with reference to R-LTRPT.1.1.(a) and (d) of Appendix FM.
<b>No partner raised</b>	As you have not raised anything that would lead us to believe you have a partner in the United Kingdom, you do not meet the requirements of R-LTRP.1.1 (a) to (d) of Appendix FM, and your application is therefore refused under paragraph D-LTRP.1.3 with reference to R-LTRP.1.1.(a) to (d) of Appendix FM.
<b>Definition of 'Partner'</b>	<p>You have applied for leave to remain on the basis of your relationship with [insert name]. The requirements for leave to remain as a partner are set out in section R-LTRP of Appendix FM of the Immigration Rules. However, for the purposes of that section, a “partner” is defined in paragraph GEN.1.2. of Appendix FM as the applicant’s spouse, civil partner, fiancé(e) or proposed civil partner, or a person who has been living together with the applicant in a relationship akin to a marriage or civil partnership for at least two years prior to the date of application.</p> <p>From the information provided it appears that [insert reason why they do not meet the criteria under GEN.1.2.]. In view of this, it is not accepted that you meet the definition of a partner as defined in GEN.1.2. You therefore fail to meet the requirements of paragraph R-LTRP with reference to GEN.1.2 of Appendix FM of the Immigration Rules.</p>
<b>Applicant and/or their partner are not in the UK</b>	<p>It is not accepted that [you and/or your partner] are in the UK [insert here reasons why you believe the applicant or their partner are not in the UK].</p> <p>Consequently, you do not meet the requirements of paragraphs R-LTRP.1.1.(a) of Appendix FM of the Immigration Rules.</p>
<b>Immigration status of partner</b>	<p>Your partner is not (choose one or more of the following options):</p> <ul style="list-style-type: none"> <li>• in the UK</li> <li>• a British citizen</li> <li>• present or settled in the UK</li> <li>• in the UK with refugee leave or humanitarian protection.</li> </ul>

Refusal Reason	Suggested Wording
	<p>You therefore fail to meet the requirements of paragraph E-LTRP.1.2. of Appendix FM of the Immigration Rules.</p>
<b>Age</b>	<p>You were under the age of 18 at the date of your application. You therefore fail to meet the requirement of paragraph E-LTRP.1.3. of Appendix FM of the Immigration Rules.</p> <p><b>AND/OR</b></p> <p>Your partner was under the age of 18 at the date of your application. You therefore fail to meet the requirement of paragraph E-LTRP.1.4. of Appendix FM of the Immigration Rules.</p>
<b>Degree of relationship</b>	<p>You are the <b>[insert relationship to partner]</b> of <b>[insert name]</b>. This relationship is within the prohibited degree of relationship as defined by the Marriage Act 1949, the Marriage (Prohibited Degrees of Relationship) Act 1986 and the Civil Partnership Act 2004.</p> <p>You therefore fail to meet the requirement of paragraph E-LTRP.1.5. of Appendix FM of the Immigration Rules.</p>
<b>Requirement to have met in person</b>	<p>It is not accepted that you and your partner have met in person because <b>[insert reason why it is not accepted that applicant and partner have met in person]</b>.</p> <p>As it has not been established that you and your partner have met in person, you fail to meet the requirement of paragraph E-LTRP.1.6. of Appendix FM of the Immigration Rules.</p>
<b>Genuine and subsisting relationship</b>	<p>It is not accepted that your relationship with your partner is genuine and subsisting. <b>[Insert reasons, with reference to Guidance on determining a genuine relationship <a href="#">FM 2.0 Genuine and Subsisting Relationship Guidance</a>]</b>.</p> <p>You therefore fail to meet the requirement of paragraph E-LTRP.1.7. of Appendix FM of the Immigration Rules.</p>
<b>Valid marriage or civil partnership</b>	<p>You have not provided specified evidence as required by paragraph 26 of Appendix FM-SE to the Immigration Rules that you and your partner are in a valid marriage/have entered into a valid civil partnership.</p> <p><b>OR</b></p> <p>The evidence you have provided as to the validity of your marriage/civil partnership is not accepted because <b>[provide reasons]</b>.</p> <p>You therefore fail to meet the requirement of paragraph E-LTRP.1.8. of Appendix FM of the Immigration Rules.</p>

Refusal Reason	Suggested Wording
<p><b>Previous relationship has not broken down permanently and/or polygamy</b></p>	<p>On <b>[insert date of previous marriage/civil partnership]</b> you <b>were married to/entered into a civil partnership with (delete as appropriate) [insert name of person].</b></p> <p>You claim to presently be <b>married/in a civil partnership with (delete as appropriate) [insert name of current partner].</b></p> <p>You have not provided the evidence specified in paragraph 26 of Appendix FM-SE to the Immigration Rules that your <b>previous marriage/civil partnership (delete as appropriate) with [insert name of person]</b> has been dissolved. There is no evidence that this is a polygamous relationship that falls within paragraph 278(i) of the Immigration Rules.</p> <p>You therefore fail to meet the requirement of paragraph E-LTRP.1.9. of Appendix FM of the Immigration Rules.</p>
<p><b>Intention to live together permanently in the UK</b></p>	<p>It is not accepted that you and your <b>partner intend to live together/have lived together permanently in the UK (delete as appropriate)</b> because <b>[insert reason why this is not accepted].</b></p> <p>You therefore fail to meet the requirement of paragraph E-LTRP.1.10. of Appendix FM of the Immigration Rules.</p>
<p><b>Current partner is not the same as at the last grant of leave (and there are other refusal reasons e.g. can't meet the definition of partner, or doubts as to genuine nature of new relationship)</b></p>	<p>You have applied for leave to remain on the basis of your partner <b>[insert name]</b>, who is not the same partner with whom you applied for your previous grant of leave.</p> <p>You therefore fail to meet the requirement of paragraph E-LTRP.1.10. of Appendix FM to the Immigration Rules.</p>
<p><b>Marriage/civil partnership has not taken place</b></p>	<p>You were granted entry clearance to the UK as a <b>fiancé(e) / proposed civil partner (delete as appropriate)</b> on <b>[insert date]</b>. Your <b>marriage/civil partnership (delete as appropriate)</b> has not taken place during the 6 month period of that entry clearance.</p> <p>You have stated that <b>[insert explanation provided by applicant]</b>. This explanation is not considered to be a good reason as to why the <b>marriage/civil partnership (delete as appropriate)</b> did not take place because <b>[insert reasons]</b>.</p> <p><b>AND/OR</b></p>

Refusal Reason	Suggested Wording
	<p>You have not provided evidence that the <b>marriage/civil partnership (delete as appropriate)</b> will take place in the next 6 months.</p> <p>You therefore fail to meet the requirement of paragraph E-LTRP.1.11. of Appendix FM of the Immigration Rules.</p>
<p><b>Immigration status requirement – here as a visitor or with valid leave of 6 months or less</b></p>	<p>You are currently in the UK <b>with leave as a visitor/with valid leave granted for a period of 6 months or less (delete as appropriate)</b>. You therefore fail to meet the requirement as a partner under paragraph E-LTRP.2.1. of Appendix FM of the Immigration Rules.</p>
<p><b>Immigration status requirement – not been on TA/TR for more than 6 months at date of application</b></p>	<p>You were placed on <b>Temporary Admission or Temporary Release on [insert date]</b>, and your current application was made on <b>[insert date]</b>. Consequently, you have not been in the UK with <b>Temporary Admission or Temporary Release for a continuous period of more than 6 months at the date of your application</b>. You therefore fail to meet the requirement as a partner under paragraph E-LTRP.2.2. of Appendix FM of the Immigration Rules.</p>
<p><b>EX.1 not met</b></p>	<p>You do not meet the requirements of EX.1 and it does not apply in your case because <b>[outline here the reasons why they do not meet the requirements of EX.1. including no genuine and subsisting parental relationship with a child in the UK who is a British Citizen or has lived here continuously for at least the 7 years prior to the date of application, and/or reasonable to expect the child to leave the UK, for EX.1.(a); and no genuine and subsisting partner relationship and insurmountable obstacles to family life with that partner continuing outside the UK for EX.1.(b)., which means they therefore fail to meet the requirements of R-LTRP.1.1.(d)(iii)]</b>.</p> <p>Consequently, it is not accepted that you meet the requirements of paragraph R-TRP.1.1.(d)(iii).</p>

## A6. Example Parent Refusal Paragraphs

**Note:** The following wordings are examples. They do not constitute an exhaustive list of possible refusal paragraphs.

Refusal Reason	Suggested Wording
<b>No dependent child(ren) raised</b>	As you have not raised anything that would lead us to believe you have any dependent children in the UK, you do not meet the requirements of R-LTRPT.1.1 (a) to (d) of Appendix FM, and your application is therefore refused under paragraph D-LTRPT.1.3 with reference to R-LTRPT.1.1.(a) to (d). of the Immigration Rules.
<b>Definition of “parent”</b>	<p>You have applied for leave to remain on the basis of your relationship with [insert name] who is a child. The requirements for leave to remain as a parent are set out in Section R-LTRPT of Appendix FM of the Immigration Rules. However, for the purposes of that section, a “parent” is defined in paragraph 6 of the Interpretation Section of the Immigration Rules.</p> <p>From the information provided it appears that [insert reason why they do not meet the criteria under paragraph 6]. In view of this fact, it is not accepted that you meet the definition of a parent as defined in paragraph 6. You therefore fail to meet the requirements of paragraph R-LTRPT with reference to paragraph 6 of the Immigration Rules.</p>
<b>Applicant and/or their child(ren) are not in the UK</b>	<p>It is not accepted that [you and/or your child] are in the UK [insert here reasons why you believe the applicant or their child(ren) are not in the UK].</p> <p>Consequently, you do not meet the requirements of paragraph R-LTRPT.1.1.(a) of Appendix FM of the Immigration Rules.</p>
<b>Not related as claimed</b>	<p>You have applied for leave to remain on the basis of your relationship with [insert name] who is a child. The requirements for leave to remain as a parent are set out in Section R-LTRPT of Appendix FM of the Immigration Rules. However, for the purposes of that section, a “parent” is defined in paragraph 6 of the Interpretation Section of the Immigration Rules.</p> <p>However, [insert reason why it is not accepted that the applicant and child are related as claimed]. In view of this fact, the Secretary of State is not satisfied that you are the parent of a child who is resident in the UK as you have claimed. You therefore fail to meet the requirements of paragraph E-LTRPT with reference to paragraph 6 of the Immigration Rules.</p>
<b>Child not under 18</b>	Your child [insert name] was not under the age of 18 at the date of application. You therefore fail to meet the requirements of paragraph E-LTRPT.2.2. of Appendix FM of the Immigration Rules.

Refusal Reason	Suggested Wording
<p><b>Immigration status of child</b></p>	<p>Your child: <b>(choose one or more of the following options)</b></p> <ul style="list-style-type: none"> <li>• is not living in the UK</li> <li>• is not a British citizen</li> <li>• is not settled in the UK</li> <li>• has not lived in the UK continuously for at least the 7 years immediately preceding the date of application</li> </ul> <p>You therefore fail to meet the requirements of paragraph E-LTRPT.2.2. of Appendix FM of the Immigration Rules.</p>
<p><b>Parent does not have sole parental responsibility or child does not normally live with them</b></p>	<p>In order to meet the requirements of paragraph E-LTRPT.2.3.(a) an applicant must show that they either have sole responsibility, or that the child normally lives with them and not the other parent (who is British or settled in the UK).</p> <p>From the information provided <b>[insert what they have stated and reason why they do not have sole parental responsibility]</b>. In view of this fact, it is not accepted that you have sole parental responsibility for your child, and you therefore fail to meet the requirements of paragraph E-ELTRPT.2.3.(a) of the Immigration Rules.</p>
<p><b>Child does not normally live with the parent</b></p>	<p>In order to meet the requirements of paragraph E-LTRPT.2.3.(a) an applicant must show that they either have sole parental responsibility, or that the child normally lives with them and not the other parent (who is British or settled in the UK).</p> <p>From the information provided <b>[insert what they have stated and reason why they do not meet the requirement for child to normally live with them and not the other parent]</b>. In view of this fact, it is not accepted that your child normally lives with you , and you therefore fail to meet the requirements of paragraph E-ELTRPT.2.3.(a) of the Immigration Rules.</p>
<p><b>Other parent or carer not a British Citizen</b></p>	<p>In order to meet the requirements of paragraph E-LTRPT.2.3. an applicant must show that the child's other parent is either British or settled in the UK.</p> <p>However it is not accepted that the child's other parent is British or settled in the UK because <b>[insert reasons why it is not accepted that they are British or settled]</b>. You therefore fail to meet the requirements of paragraph E-LTRPT.2.3. of the Immigration Rules.</p>
<p><b>Child's other parent is the partner of the applicant in cases where sole parental responsibility is not claimed</b></p>	<p>In order to meet the requirements of paragraph E-LTRPT.2.3.(b) the parent or carer with whom the child normally lives must not be your partner.</p> <p>However, from the information provided it appears that <b>[insert reason why we believe the child's other parent is the applicant's partner]</b>. You therefore fail to meet the requirements of paragraph E-LTRPT.2.3.(b) of the Immigration Rules.</p>

Refusal Reason	Suggested Wording
<p><b>Applicant is eligible to apply as a partner</b></p>	<p>In order to meet the requirements of paragraph E-LTRPT.2.3.(b) an applicant must not be eligible to apply for leave to remain as a partner under Appendix FM.</p> <p>However, from the information provided it appears that <b>[insert reason why we believe the applicant is eligible to apply for leave as a partner under Appendix FM]</b>. You therefore fail to meet the requirements of paragraph E-LTRPT.2.3.(b) of the Immigration Rules.</p>
<p><b>Fails to evidence sole parental responsibility or that child normally lives with them</b></p>	<p>In order to meet the requirements of paragraph E-LTRPT.2.4. (a) an applicant must provide evidence to show that they either have sole parental responsibility, that the child normally lives with them, or that they have direct access in person to their child.</p> <p>From the information provided <b>[list what evidence provided and why it is not acceptable evidence of sole parental responsibility or that the child normally lives with them]</b>. In view of this fact, it is not accepted that you have evidenced <b>you have sole parental responsibility for your child/ that your child normally lives with you (delete as appropriate)</b>, and you therefore fail to meet the requirements of paragraph E-LTRPT.2.4.(a)(i) of the Immigration Rules.</p>
<p><b>No proof of direct access in person to the child by way of residence order, contact order or sworn statement</b></p>	<p>In order to meet the requirements of paragraph E-LTRPT.2.4.(a) an applicant must provide evidence to show that they either have sole responsibility, that the child normally lives with them, or that they have direct access in person to their child.</p> <p>In support of your application you have <b>provided [list the evidence that has been provided]</b>. However, you have not produced evidence, for example by way of a Residence Order or a Contact Order granted by a Court in the UK or a (sworn) statement issued from your child's other parent (or if contact is supervised, from the supervisor), that you have direct access in person and are maintaining contact with your child. In view of this fact, it is not accepted that you have evidenced you have direct access in person to your child, and you therefore fail to meet the requirements of paragraph E-LTRPT.2.4.(a)(ii) of the Immigration Rules.</p>
<p><b>Applicant does not take, or does not intend to continue to take an active role in the child's upbringing</b></p>	<p>In order to meet the requirements of paragraph E-LTRPT.2.4.(b) an applicant must provide evidence to show that they are taking, and intend to continue to take, an active role in their child's upbringing.</p> <p>From the information provided <b>[list what evidence provided and why it is not acceptable evidence of taking and intending to continue to take an active role in the child's upbringing]</b>. In view of this fact, it is not accepted that you have evidenced <b>you are taking, and intend to continue to take, and active role in your child's upbringing</b>. You therefore fail to meet the requirements of paragraph E-LTRPT.2.4.(b) of the Immigration Rules.</p>

Refusal Reason	Suggested Wording
<b>Immigration status requirement</b>	<p>You are currently in the UK <b>with leave as a visitor/with valid leave granted for a period of 6 months or less (delete as appropriate)</b>. You therefore fail to meet the requirement as a parent under paragraph E-LTRPT.3.1 of Appendix FM of the Immigration Rules.</p>
<b>Immigration status requirement – not been on TA/TR for more than 6 months at date of application</b>	<p>You were placed on <b>Temporary Admission or Temporary Release on [insert date], and your current application was made on [insert date]</b>. Consequently, you have not been in the UK with Temporary Admission or Temporary Release for a continuous period of more than 6 months at the date of your application. You therefore fail to meet the requirement as a parent under paragraph E-LTRPT.3.2. of Appendix FM of the Immigration Rules.</p>
<b>EX.1 not met</b>	<p>You do not meet the requirements of EX.1 and it does not apply in your case because <b>[outline here the reasons why they do not meet the requirements of EX.1.(a), including no genuine and subsisting parental relationship with a child in the UK who is a British Citizen or has lived here continuously for at least the 7 years prior to the date of application, and/or reasonable to expect the child to leave the UK, which means they therefore fail to meet the requirements of R-LTRPT.1.1.(d)(iii)]</b>.</p> <p>Consequently, it is not accepted that you meet the requirements of paragraph R-TRPT.1.1.(d)(iii).</p>

## A7. Example Private Life Refusal Paragraphs

**Note:** The following wordings are examples. They do not constitute an exhaustive list of possible refusal paragraphs.

Refusal Reason	Suggested Wording
<p><b>Main applicant has not lived in UK continuously for at least 20 years</b></p>	<p>In order to meet the requirements of paragraph 276ADE(1)(iii) an applicant must show that they have lived continuously in the UK for at least 20 years (discounting any period of imprisonment).</p> <p>When considering the requirements outlined in paragraph 276ADE(1), it is noted that you are a national of [list country to which they would return, and each country if a dual national] and that you entered the UK on [date]. You have therefore lived in the UK for [state number of years] and it is not accepted you have lived continuously in the UK for at least 20 years.</p> <p><b>OR</b></p> <p>You have failed to provide sufficient evidence to show that you have lived in the UK continuously for at least 20 years.</p> <p>Consequently, you fail to meet the requirements of paragraph 276ADE(1)(iii) of the Immigration Rules.</p>
<p><b>Main applicant is under 18 (with or without the 7 years residence), and it is reasonable to expect them to leave the UK</b></p>	<p>In order to meet the requirements of paragraph 276ADE(1)(iv), an applicant must show that they are under the age of 18, have lived continuously in the UK for at least 7 years (discounting any period of imprisonment), and that it would not be reasonable to expect them to leave the UK.</p> <p>When considering the requirements outlined in paragraph 276ADE(1), it is noted that you are a national of [list country to which they would return, and each country if a dual national] and that you entered the UK on [date].</p> <p>You have therefore lived in the UK for [state number of years] and it is/it is not (delete as appropriate) accepted you have lived continuously in the UK for at least 7 years.</p> <p>However, it is not considered to be unreasonable to expect you to leave the UK because [provide details of the issues raised by the applicant and reasons why we do not consider it unreasonable to expect the child to leave the UK].</p> <p>Consequently, you fail to meet the requirements of paragraph 276ADE(1)(iv) of the Immigration Rules.</p>

<p><b>Main applicant is aged 18 - 24, not lived in UK continuously for half their life</b></p>	<p>In order to meet the requirements of paragraph 276ADE(1)(v) an applicant must show that they are aged between 18 and 24 and have spent at least half their life living continuously in the UK (discounting any period of imprisonment).</p> <p>When considering the requirements outlined in paragraph 276ADE(1), it is noted that you are a national of [list country to which they would return, and each country if a dual national] and that you entered the UK on [date]. You have therefore lived in the UK for [state number of years] and it is not accepted you have spent at least half your life living continuously in the UK.</p> <p><b>OR</b></p> <p>You have failed to provide sufficient evidence to show that you have lived in the UK continuously for at least half of your life.</p> <p>Consequently, you fail to meet the requirements of paragraph 276ADE(1)(v) of the Immigration Rules.</p>
<p><b>Main applicant is 18 or above, and has not shown there are very significant obstacles to their integration into the country to which they would have to go if required to leave the UK</b></p>	<p>In order to meet the requirements of paragraph 276ADE(1)(vi), an applicant must show that they are aged 18 or above and that there would be very significant obstacles to their integration into the country to which they would have to go if required to leave the UK.</p> <p>It is not accepted that there would be very significant obstacles to your integration into [state the country to which they would return], if you were required to leave the UK because [provide reasons why we do not believe there are very significant obstacles].</p> <p>Consequently, you fail to meet the requirements of paragraph 276ADE(1)(vi) of the Immigration Rules.</p>

## A8. Example Exceptional Circumstances Refusal Paragraphs

**Note:** The following wordings are examples. They do not constitute an exhaustive list of possible refusal paragraphs.

Refusal Reason	Suggested Wording
<p><b>No exceptional circumstances raised</b></p>	<p>It has also been considered whether your application raises any exceptional circumstances which, consistent with the right to respect for private and family life contained in Article 8 of the European Convention on Human Rights, might warrant a grant of leave to remain in the United Kingdom outside the requirements of the Immigration Rules.</p> <p>You have not raised any such exceptional circumstances, so it has been decided that your application does not fall for a grant of leave to remain outside the rules.</p>
<p><b>Possible exceptional circumstances raised – where there are NO children</b></p>	<p>It has also been considered whether the particular circumstances set out in your application constitute exceptional circumstances which, consistent with the right to respect for private and family life contained in Article 8 of the European Convention on Human Rights, might warrant a grant of leave to remain in the United Kingdom outside the requirements of the Immigration Rules.</p> <p>In support of your claim you state <b>[insert details of circumstances raised here]</b>.</p> <p>This has been carefully considered <b>[set out reasons why the circumstances are not considered exceptional]</b>.</p> <p>It has therefore been decided that there are no exceptional circumstances in your case. Consequently your application does not fall for a grant of leave outside the rules.</p>

<p><b>Possible exceptional circumstances raised – where THERE ARE children</b></p>	<p>It has also been considered whether the particular circumstances set out in your application constitute exceptional circumstances which, consistent with the right to respect for private and family life contained in Article 8 of the European Convention on Human Rights, might warrant a grant of leave to remain in the United Kingdom outside the requirements of the Immigration Rules.</p> <p>We have also taken into account the need to safeguard and promote the welfare of children in the United Kingdom in accordance with the Secretary of State’s duty under section 55 of the Borders, Citizenship and Immigration Act 2009.</p> <p>In support of your application you have raised the fact that you have [insert number of children] child who is/children who are (delete as appropriate) aged [list children’s ages] and has/have (delete as appropriate) been living in the United Kingdom for [list number of years for each child] years/all of his life/all of her life/all of their lives (delete as appropriate). You have also raised [list any relevant issues in relation to the children and their best interests].</p> <p>This has been carefully considered. [Set out the reasons why the circumstances are not considered exceptional].</p> <p>It has therefore been decided that there are no exceptional circumstances in your case. Consequently your application does not fall for a grant of leave outside the rules.</p>
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[Back to Contents](#)

## 15. Contact for Further Information

This guidance is owned by the Family Policy Team.

Any queries should be directed to [FamilyOpsPolicy@homeoffice.gsi.gov.uk](mailto:FamilyOpsPolicy@homeoffice.gsi.gov.uk)

[Back to Contents](#)