



Home Office

Immigration Directorate Instruction Family Migration: Chapter 8 Transitional Provisions

Family Members under Part 8 and Appendix FM of the Immigration Rules

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1. Use of this guidance

This guidance must be used by decision makers considering applications for leave to remain or indefinite leave to remain under Part 8 of the Immigration Rules which fall under the transitional provisions in paragraphs A277 to A281 of the Rules.

This guidance applies to:

- applications made before 9 July 2012, which were not decided before that date;
- applications made on or after 9 July 2012, by persons who were granted entry clearance or limited leave to remain under Part 8 of the Rules before 9 July 2012 and who apply for further leave on the same basis;
- successful appeals determined before, on or after 9 July 2012;
- Article 8 claims for leave outside the Rules;
- applicants granted discretionary leave before 9 July 2012;
- applications under the 14 year long residence route;
- applications under the 10 year long residence route;
- applications from family members of British or settled serving members of HM Forces; and
- applications from persons wishing to exercise rights of access to a child resident in the UK.

The guidance may also be used by decision makers considering applications for entry clearance/leave to enter to clarify which Immigration Rules remain available to new family route applicants overseas.

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2. Introduction

Appendix FM, Appendix FM-SE and paragraph 276ADE(1) of the Rules apply to all applications to which Part 8 or Part 7 of the Rules previously applied before 9 July 2012, except where the ability to apply under specific provisions of Part 7 and 8 is preserved and continues to apply as set out in the Statements of Changes to the Immigration Rules or except where provisions in Part 7 are unaffected by these changes. Some changes have been made to transitional arrangements over time and this document contains the most up to date position in respect of Immigration Rules changes made via HC 297 which came into force on 3 August 2015.

From 9 July 2012, the Immigration Rules have contained a new framework for consideration of the public interest in ECHR Article 8 claims. 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 Article 8 of the European Convention on Human Rights (the right to respect for private and family life). 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.

On 28 July 2014 sections 117A-117D of the Nationality, Immigration and Asylum Act 2002, inserted by section 19 of the Immigration Act 2014, were implemented, together with some changes to the Immigration Rules (HC 532) which were made, without transitional provisions, to align with this. This means that, from 28 July 2014, the consideration of Article 8 claims in line with the current version of the Immigration Rules reflects the statements of public interest set out in sections 117B and 117C of the 2002 Act.

The implementation of a new set of family and private life Immigration Rules on 9 July 2012 preserved the ability for specified applicants to apply under the previous Rules for those who had already been granted leave under them prior to 9 July 2012 or who were granted leave under them from 9 July 2012 on the basis of an application under the previous Rules made before 9 July 2012. This position has not been changed by the 28 July 2014 changes. The transitional provisions set out in this guidance continue to apply unless otherwise stated.

Following *Singh v SSHD* [2015] EWCA Civ 74, we cannot consider the family or private life Immigration Rules in Appendix FM and paragraph 276ADE in relation to the Article 8 claims of applicants whose application was made before 9 July 2012 and decided in the period from 9 July 2012 to 5 September 2012.

Application prior to 9 July 2012 with a decision made in the period from 9 July 2012 to 5 September 2012

In non-criminal cases that made a Rules-based application prior to 9 July 2012, with a decision made in the period from 9 July 2012 to 5 September 2012, the transitional provisions allowing specified applicants to continue to rely on the pre-9 July 2012 Rules apply. However,

those who failed to meet those previous Rules could not have their Article 8 claim considered by reference to the family or private life Immigration Rules in Appendix FM and paragraph 276ADE but rather by reference to Article 8 case law.

Application prior to 9 July 2012 with a decision made from 6 September 2012 onwards

In non-criminal cases that made a Rules-based application prior to 9 July 2012 and whose cases are decided from 6 September 2012 onwards, the pre-9 July 2012 Rules will continue to apply to their case. However, if they fail to meet those previous Rules, we will go on to consider their Article 8 claim by reference to the current Immigration Rules and the current policy on exceptional circumstances contained in the published guidance.

In cases which applied under the Rules before 9 July 2012 and which were decided from 6 September 2012 onwards, there are two separate elements to the consideration:

1. The application under Part 8 of the Immigration Rules (which we accept did not fully cover all of the elements relevant to an Article 8 consideration); and
2. Any Article 8 claim raised as part of the application.

Application made from 9 July 2012 with a decision made from 9 July 2012 onwards

Appendix FM and paragraph 276ADE(1) of the current Immigration Rules, along with our current policy on considering exceptional circumstances, are fully comprehensive of Article 8. So in any case that applied from 9 July 2012, the Article 8 consideration is done by reference to the 10-year partner, parent and private life routes in Appendix FM and paragraph 276ADE(1) and (if they fail to meet the requirements of those routes) by reference to whether there are exceptional circumstances in line with the published guidance.

In cases eligible to apply in the UK under the previous Rules on or after 9 July 2012, the two elements set out above must be considered separately. We do this by:

1. Considering the application under the provisions of Part 8 of the Immigration Rules under which the application was made; and
2. If the applicant fails to meet those requirements, considering any Article 8 claim under the 10-year partner, parent and private life routes in Appendix FM and paragraph 276ADE(1) of the current Immigration Rules and (if they fail to meet the requirements of those routes) by reference to whether there are exceptional circumstances in line with the published guidance.

In non-criminal **cases that applied on or after 9 July 2012**, regardless of whether their claim was Rules-based or seeking consideration of Article 8 outside the Rules, their Article 8 claim should be considered by reference to the current Immigration Rules and the current policy on exceptional circumstances contained in the published guidance.

2.1. Establishing the date of application

The date of an application is determined by paragraphs 30 and 34G of the Immigration Rules, which can be summarised as follows:

- (i) the date the application was posted if a postal application by Royal Mail;

- (ii) the date the application was submitted and accepted by a Premium Service Centre if a premium service application;
- (iii) the date the application was received by the Home Office if sent by courier or other postal services provider; or
- (iv) the date the application was submitted and the correct fee paid if the application is for entry clearance made outside the UK.

Please note that the date of an online payment is not the date of application.

2.2. Immigration Health Charge

From 6 April 2015, under the Immigration (Health Charge) Order 2015, applications for leave to remain under the transitional provisions 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 3 August 2015 the Immigration Rules under paragraphs 276A04 and A277D were amended to clarify the basis on which an applicant can be required to pay the immigration health charge before being granted limited leave to remain where an application for indefinite leave to remain fails to meet the requirements for that leave but falls to be granted limited leave instead.

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3. Applications that fall under the Transitional Provisions

3.1. Applicants granted or who applied for leave under the Rules before 9 July 2012

- 3.1.1. A person who meets the following criteria will remain subject to the Immigration Rules in force as at 8 July 2012 until settlement (the grant of indefinite leave to remain) even where the application is granted on or after 9 July 2012:
- a person who made an application before 9 July 2012 under Part 8 of the Immigration Rules which was not decided by 9 July 2012; and
 - a person who is in the UK and had been granted entry clearance or limited leave to remain under Part 8 following an application for initial entry clearance or leave to remain under Part 8 submitted before 9 July 2012, and this leave is extant where this is a requirement of Part 8, and they apply for further leave on the same basis.
- 3.1.2. Where Part 8 requires extant leave, the applicant will be considered under Part 8 if their leave has expired by 28 days or less. If their leave has expired by more than 28 days, they will not qualify for consideration under Part 8 under the transitional provisions.
- 3.1.3. Under the transitional provisions, Part 8 will apply through to indefinite leave to remain to those persons who were granted in one of the following categories (on the basis of an application submitted before 9 July 2012):
- person exercising rights of access to a child resident in the UK (see Part 7 of the Immigration Rules);
 - fiancé(e);
 - proposed civil partner;
 - spouse;
 - civil partner;
 - same sex partner;
 - unmarried partner;
 - child;
 - adult dependent relative;
 - post-flight family member of a person granted refugee leave or humanitarian protection in the UK; or
 - 14 year long residence.

- 3.1.4. The basis for these transitional provisions is set out at paragraph [A280\(c\)](#) of Part 8.
- 3.1.5. A person who was previously granted entry clearance or leave to remain under Part 8 and has been living outside the UK, during which time their leave under Part 8 has expired, cannot benefit from the transitional provisions. The transitional provisions allow a person already granted leave and living in the UK to continue their route to settlement. If a person is not in the UK and they do not have an outstanding application that was submitted before 9 July 2012, they cannot apply under Part 8 of the Immigration Rules. They must apply under Appendix FM.
- 3.1.6. A spouse, civil partner, unmarried partner or same sex partner granted leave under Part 8 cannot continue to benefit from the transitional provisions where they apply for limited leave or indefinite leave to remain sponsored by a partner who is not their original sponsor under Part 8. Under paragraph [A280A](#) a person granted leave as a spouse, civil partner, unmarried partner or same sex partner under Part 8 can only apply to continue their route to settlement under Part 8 if their sponsor is the same person as the sponsor of the applicant's last grant of leave in that category. If a person is now living in the UK with a different partner, they cannot continue to apply under Part 8 of the Immigration Rules. They must apply under Appendix FM.
- 3.1.7. A person aged 18 or over who, since their last grant of limited leave to enter or remain under Part 8, has been granted or refused leave under Appendix FM, Appendix Armed Forces or paragraph 276BE to CE of the Immigration Rules, or been granted limited leave to enter or remain in a category outside their original route to settlement, cannot rely on the transitional provisions in paragraph A280. See paragraph [A280B](#) of the Immigration Rules.
- 3.1.8. Information relating to family members of a Points Based System migrant can be found at [sections 4.3 to 4.5](#) of this guidance.

3.2. General Grounds for Refusal and Suitability

Part 8 applications submitted on or after 13 December 2012:

- 3.2.1. Following changes to the Immigration Rules which came into effect on 13 December 2012, the requirement in paragraph A279 of the Part 8 transitional provisions, to consider cases against the Suitability requirements in Section S-LTR of Appendix FM, was removed. This change applies to applications submitted on or after 13 December 2012.
- 3.2.2. Applications submitted on or after 13 December 2012 under the transitional provisions in paragraph A280(c) will be considered against the requirements of the rule under which they are applying. This will include the current version of the General Grounds for Refusal in [Part 9](#) of the Immigration Rules – rather than the version of the General Grounds for Refusal that applied at the date of their application.
- 3.2.3. It is therefore no longer necessary to consider these cases against the Suitability requirements in Section S-LTR of Appendix FM.
- 3.2.4. Where the applicant is liable to deportation, cases considered on or after 9 July 2012 under Part 8 or paragraph 276A-276D of the Immigration Rules shall be

considered under [paragraphs A398-399D](#), irrespective of the date the application was made.

Decisions made on Part 8 HM Forces family member applications on or after 1 December 2013:

- 3.2.5. New Immigration Rules in Appendix Armed Forces came into force on 1 and 30 December 2013. These introduced suitability criteria that must be met by the family members of HM Forces who can still apply under Part 8 under transitional provisions.
- 3.2.6. The suitability requirements in Part 2 of Appendix Armed Forces apply to all applications made, as the family member of a British or settled serving member of HM Forces, under the Part 8 transitional provisions and decided on or after 1 December 2013.
- 3.2.7. This means that all applications decided on or after this date, from the family member of a British or settled member of HM Forces already on the Part 8 route and who may rely on the transitional provisions, should include a consideration of Part 2 – Suitability Requirements of Appendix Armed Forces.
- 3.2.8. In addition to the Part 2 – Suitability Requirements, consideration should be given to of all the General Grounds for Refusal in decisions made from 1 to 29 December 2013. However, in any decision from 30 December 2013, only the following paragraphs of the General Grounds for Refusal:
- 320(3), (7B), (10), (11); 322(2) and (3); 321(iii); 321 (4A); and 323(i),
- should be considered in respect of an application from a family member of a British or settled member of HM Forces who is already on the Part 8 route and may rely on the transitional provisions.
- 3.2.9. The Part 2 – Suitability Requirements of Appendix Armed Forces, outlined above, apply irrespective of the date of the application.
- 3.2.10. See guidance on Part 2 – Suitability Requirements of Appendix Armed Forces:
- https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/274885/01-forces-criminality.pdf

3.3. Individuals granted Discretionary Leave before 9 July 2012

- 3.3.1. Applicants who were granted leave under the Discretionary Leave policy before 9 July 2012 will continue to be considered under that policy through to settlement, provided they continue to qualify for leave and their circumstances have not changed. (Normally the person can apply for settlement after accruing 6 years' continuous Discretionary Leave, unless Discretionary Leave has been granted because the individual is excluded from a grant of asylum or humanitarian protection, in which case 10 years' leave is usually required).
- 3.3.2. Consideration must be given to the General Grounds for Refusal when considering an application for further Discretionary Leave.

3.4. Transitional provisions and applications for Limited Leave to Remain or Indefinite Leave to Remain

- 3.4.1. Paragraph A280(c) of the transitional provisions allows for Part 8 of the Rules to continue to apply on or after 9 July 2012 to applicants who either:
- (i) made an application before 9 July 2012 under Part 8 which was not decided by that date and is subsequently decided; or
 - (ii) were granted entry clearance or limited leave to remain under Part 8 before 9 July 2012.
- 3.4.2. Under the transitional provisions, if an application for indefinite leave to remain does not meet the requirements of Part 8 for indefinite leave to remain (in a category other than as the family member of a relevant PBS migrant), the caseworker must consider under paragraph [A277A](#) whether the applicant should be granted further limited leave in the same category under the Part 8 Rules in force at the date of decision.
- 3.4.3. If an applicant for limited leave to remain or indefinite leave to remain does not qualify for further limited leave in the same category under the Part 8 Rules at the date of decision, then, under paragraph A277B, the caseworker should consider the application (excluding an application from a family member of a relevant PBS migrant, from a victim of domestic violence or from a bereaved spouse, civil partner, unmarried partner or same sex partner) under the 10-year partner, parent and private life routes in Appendix FM and paragraphs 276ADE to 276DH of the current Immigration Rules and, where the applicant does not meet the requirements of those routes, should consider whether there are exceptional circumstances in line with the published guidance.

3.5. Consideration of further leave to remain (excluding a family member of a relevant PBS migrant)

- 3.5.1. Paragraph [A277A](#)(a) and (b) of Part 8 makes provision for an application for limited leave to remain or indefinite leave to remain to which Part 8 of the Rules continues to apply (excluding an application from a family member of a relevant PBS migrant) where:
- The applicant does not meet the requirements of Part 8 for indefinite leave to remain (where the application is for indefinite leave to remain); and
 - The applicant for limited leave to remain or indefinite leave to remain meets or continues to meet the requirements for limited leave to remain in force at the date of decision.
- 3.5.2. That further limited leave to remain under Part 8 may be granted of such a period and subject to such conditions as the Secretary of State deems appropriate, provided any requirement to pay the immigration health charge under the Immigration (Health Charge) Order 2014 is met under paragraph A277D(b). The caseworker will usually grant limited leave for the same period and subject to the same conditions as the person's last grant of leave to remain under Part 8 unless there are reasons to depart from that.

3.5.3. Applicants will be eligible to apply for settlement once they are able to meet all of the requirements for indefinite leave to remain.

3.6. Limited Leave to Remain refused or Indefinite Leave to Remain refused followed by refusal of further leave to remain – consideration of Private and Family life (excluding a family member of a PBS migrant, a victim of domestic violence or a bereaved spouse, civil partner, unmarried partner or same sex partner)

3.6.1. Paragraph [A277B](#) of Part 8 provides for an application for limited leave to remain or indefinite leave to remain to which Part 8 of the Rules continues to apply (excluding an application from a family member of a relevant PBS migrant, from a victim of domestic violence or from a bereaved spouse, civil partner, unmarried partner or same sex partner), but which does not meet the requirements of Part 8 for indefinite leave to remain or limited leave to remain at the date of decision, to be considered under:

- Paragraphs 276ADE to 276DH (private life);
- Paragraph R-LTRP.1.1. (a), (b) and (d) of Appendix FM – (family life as a partner); and/or
- Paragraph R-LTRPT.1.1. (a), (b) and (d) of Appendix FM – (family life as a parent).

3.6.2. If an applicant meets these requirements, they will be granted limited leave to remain under paragraph D-LTRP.1.2. or D-LTRPT.1.2. of Appendix FM or paragraph 276BE(1) for a period not exceeding 30 months¹, subject to paragraph GEN.1.11A. of Appendix FM and paragraph 276A02 on whether such leave will be subject to a condition of no recourse to public funds, and provided any requirement to pay the immigration health charge under the Immigration (Health Charge) Order 2014 is met under paragraph A277D(b) or 276A04.

3.6.3. The person may be eligible to apply for indefinite leave to remain under paragraphs 276ADE to 276DH (private life) or Appendix FM (family life) once they have completed the period of 120 months' continuous leave required under the relevant provisions.

¹ 30 months may be exceeded where appropriate under paragraph [GEN.1.13.](#) of Appendix FM or paragraph [276BE\(3\)](#) of the Immigration Rules.

- 3.6.4. The period of the person's continuous leave under Part 8 can be counted towards the period of continuous leave which must be completed under paragraph 276B (long residence provisions) if leave was granted via paragraph A277B.
- 3.6.5. Where an application falls for refusal under the Immigration Rules under Part 8 where paragraph A277A is applied, and then under Appendix FM (family life) and paragraphs 276ADE to 276DH (private life) where paragraph A277B is applied, caseworkers must go on to consider whether there are any exceptional circumstances under the published guidance that would warrant a grant of leave to remain outside the Rules on the basis of Article 8. Caseworkers should refer to [Appendix FM 1.0b Family Life \(as a Partner or Parent\) and Private Life: 10-Year Routes](#) for guidance.

3.7. Bereaved Partners – Indefinite Leave to Remain refused

- 3.7.1. Paragraph [A277A\(c\)](#) of Part 8 provides for an applicant (where the application is for indefinite leave to remain as a bereaved partner) who does not meet the requirements of Part 8 for indefinite leave to remain as a bereaved partner only because paragraph 322(1C)(iii) or 322(1C)(iv) of the General Grounds for Refusal applies, to be granted further limited leave to remain under Part 8 for a period not exceeding 30 months and subject to such conditions as the Secretary of State considers appropriate, provided any requirement to pay the immigration health charge under the Immigration (Health Charge) Order 2014 is met under paragraph A277D(b).
- 3.7.2. Applicants will be eligible to apply for settlement once they are able to meet all of the requirements for indefinite leave to remain.

3.8. Points Based System applications involving Article 8

- 3.8.1. Where a PBS applicant, or their family member, raises Article 8 as part of an application, the following guidance should be followed:

(i) If the application was made before 9 July 2012:

- 3.8.2. Any Article 8 claim raised should be considered as part of the initial decision. The transitional provisions at paragraph [A277C](#) of Part 8 allow the Secretary of State, where she deems it appropriate, to consider any Article 8 claim under:
- Paragraphs R-LTRP.1.1. (a), (b) and (d) and EX.1. (family life as a partner under the 10-year route), or R-LTRPT.1.1. (a), (b) and (d) and EX.1. (family life as a parent under the 10-year route) of Appendix FM; and/or
 - Paragraph 276ADE(1) (private life) of the Immigration Rules.

- 3.8.3. If the applicant meets the requirements for leave under those provisions, leave to remain may be granted under paragraph D-LTRP.1.2. or D-LTRPT.1.2. of Appendix FM or paragraph 276BE(1), as applicable, for a period not exceeding 30 months.² This approach to the period of leave also applies to leave outside the Rules granted under paragraph 276BE(2) or paragraph GEN.1.10. or GEN.1.11. of Appendix FM on the basis of exceptional circumstances. All of these grants of leave are subject to paragraph GEN.1.11A. of Appendix FM and paragraph 276A02 on whether such leave will be subject to a condition of no recourse to public funds.
- 3.8.4. Where an application falls for refusal under the Immigration Rules under Appendix FM and private life where paragraph A277B is applied, caseworkers must go on to consider whether there are any exceptional circumstances under the published guidance that would warrant a grant of leave to remain outside the Rules on the basis of Article 8. Caseworkers should refer to [Appendix FM 1.0b Family Life \(as a Partner or Parent\) and Private Life: 10-Year Routes](#) for guidance.
- 3.8.5. The applicant may be eligible to apply for settlement after 120 months with such leave or once they qualify for indefinite leave to remain under the Long Residence provisions in paragraph 276A.

(ii) Where the application was made on or after 9 July 2012:

- 3.8.6. Where Article 8 is raised as part of an application under a PBS route in an application submitted on or after 9 July 2012, the applicant should be informed that provision now exists within the Immigration Rules for those wishing to remain in the UK on the basis of their family or private life. Accordingly, the following paragraph should be used when refusing PBS applications in which an Article 8 claim has been raised:

“In your application for leave to remain as a [[enter relevant PBS route](#)] you have raised the fact that you also wish to rely on family or private life established in the UK pursuant to Article 8 of the ECHR. On 9 July 2012 the Immigration Rules were amended and now include provisions for applicants wishing to remain in the UK on the basis of their family or private life. These Rules are in Appendix FM (family life) and paragraph 276ADE(1) (private life). If you wish the Home Office to consider an application on the basis of Article 8, you must make a separate charged application using the appropriate specified application form (FLR(M) for the 5-year partner route, or FLR(FP) for the 10-year partner route, the 5- or 10-year parent route, or the 10-year private life route). For more information please consult gov.uk: <https://www.gov.uk/government/organisations/uk-visas-and-immigration>”.

- 3.8.7. See also section 6 below for guidance concerning reconsideration of cases, and for handling of Pre-Action Protocols and Judicial Reviews.

² 30 months may be exceeded where appropriate under paragraph [GEN.1.13.](#) of Appendix FM or [276BE\(3\)](#) of the Immigration Rules.

4. Family and private life applications submitted on or after 9 July 2012

4.1. Family applications

- 4.1.1. Applications for leave to enter or remain as a family member under Part 8 submitted on or after 9 July 2012 by an applicant without extant leave under Part 8, where this is a requirement of Part 8, will be considered under the requirements of [Appendix FM](#) and [Appendix FM-SE](#).

4.2. Private life applications

- 4.2.1. On 28 July 2014 paragraph 276ADE(1) of the Immigration Rules was amended to change the requirement in paragraph 276ADE(1)(vi) from “has no ties (including social, cultural or family) with the country to which he would have to go if required to leave the UK” to “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.”

No transitional arrangements applied to this change. This change took effect on 28 July 2014, so the new wording applies to all applications to which paragraphs 276ADE to 276DH apply (or can be applied by virtue of the Immigration Rules), and to any other ECHR Article 8 claims (except for those from foreign criminals), which are decided on or after that date.

4.3. Applicants granted leave to enter or remain as a PBS dependant before 9 July 2012

- 4.3.1. Changes to the Immigration Rules were implemented for Points Based System dependants on 9 July 2012 and 6 September 2012.
- 4.3.2. The amended Rules allow a PBS dependant to qualify for leave to enter or remain and to complete the route to settlement, provided they remain the partner of the same person who was their partner when they entered this route. They do not have to switch into the category of partner of a settled person, provided that the main PBS migrant gains settlement as a PBS migrant, or gains British citizenship following a grant of indefinite leave to remain as a PBS migrant.
- 4.3.3. The changes have the following impact for PBS dependants:

a) Qualifying for ILR at the same time as a relevant PBS migrant:

- 4.3.4. An applicant who had leave to enter or remain in the UK as a dependent partner before 9 July 2012, and who has had continuous leave in this category from 9 July 2012 up to the date of their application for indefinite leave to remain, is required to have lived together in the UK with their partner in a marriage or civil partnership, or in a relationship similar to marriage or a civil partnership, for a period of at least 2 years: under paragraph 319E(b)(ii), (c)(ii) and (d)(i). This applies if their partner was a PBS migrant or in another immigration category on 9 July.

4.3.5. Provided they meet this requirement, together with the remaining requirements of paragraph 319E, the applicant will be eligible to apply for settlement at the same time as their partner who is a relevant PBS migrant.

b) If an applicant does not qualify for ILR at the same time as their partner gains ILR as a relevant PBS migrant – application for further leave to remain as a PBS dependant:

4.3.6. If an applicant was granted an initial period of leave to enter or remain as a PBS dependant before 9 July 2012 but had not lived together in the UK with their partner for at least the required 2 years at the date their partner applied for indefinite leave to remain, then, provided their partner was granted indefinite leave to remain as a relevant PBS migrant, the applicant can apply for further leave to remain under paragraph 319C(b)(iii)(1).

4.3.7. Provided they meet the remaining requirements of paragraph 319C, they should be granted a further period of leave to remain of 3 years under paragraph 319D(a)(ii).

4.3.8. Once they have completed the required 2-year period living together in the UK with their partner, who gained indefinite leave to remain as a relevant PBS migrant, they can apply for indefinite leave to remain under paragraph 319E(b)(i), (c)(i) and (d)(i).

4.4. Applicants granted leave to enter or remain as a PBS dependant on or after 9 July 2012

a) Qualifying for ILR at the same time as a relevant PBS migrant:

4.4.1. An applicant who is granted leave to enter or remain in the UK as the partner of a relevant PBS migrant and has not held leave as the partner of that person before 9 July 2012, must provide evidence that they have been living together with their partner in the UK in a marriage or civil partnership, or in a relationship similar to marriage or a civil partnership, for a period of at least 5 years: under paragraph 319E(b)(ii), (c)(ii) and (d)(ii).

4.4.2. The applicant must provide evidence covering this 5-year period that they:

- (i) Have been in a relationship with the same relevant PBS migrant for this entire period;
- (ii) Have spent the most recent part of the 5-year period with leave as the partner of that relevant PBS migrant, and during this period have met all of the requirements of paragraph 319C(a) to (e); and
- (iii) Have spent the remainder of the 5-year period, where applicable, as the spouse, civil partner, unmarried partner or same sex partner of that person at a time when that person had leave under another category of the Rules.

b) If an applicant does not qualify for ILR at the same date their partner gains ILR as a relevant PBS migrant – application for further leave to remain as a PBS dependant:

4.4.3. If an applicant was granted an initial period of leave to enter or remain as a PBS dependant on or after 9 July 2012 but had not lived together in the UK with their partner who is a relevant PBS migrant for at least the required 5 years at the date

their partner applied for indefinite leave to remain, then, provided their partner was granted indefinite leave to remain as a relevant PBS migrant, the applicant can apply for further leave to remain under paragraph 319C(b)(iii)(1) or (2).

- 4.4.4. Provided they meet the remaining requirements of paragraph 319C, they should be granted a further period of leave to remain of 3 years under paragraph 319D(a)(ii).
- 4.4.5. Once they have completed the required 5-year period living together in the UK with their partner, who gained indefinite leave to remain as a relevant PBS migrant, they can apply for indefinite leave to remain under:
- Paragraph 319E(b)(i), (c)(i) and (d)(ii) – where their partner has indefinite leave to remain; or
 - Paragraph 319E (b)(i), (c)(iii) and (d)(ii) – where their partner has become a British Citizen and prior to that held indefinite leave to remain as a relevant PBS migrant.
- 4.4.6. For further guidance refer to [family members of points-based system migrants](#) modernised guidance.

4.5. Long Residence and Points Based System Dependents

- 4.5.1. Where a relevant PBS migrant gains indefinite leave to remain under paragraph 276B on the basis of Long Residence, their partner **will not be able to extend their leave or gain settlement as a PBS dependant** and will be required to switch into the partner of a settled person category and apply for limited leave on that basis.
- 4.5.2. A person granted leave to enter or remain as a PBS dependant before 9 July 2012, whose partner who was a relevant PBS migrant gained indefinite leave to remain on the basis of Long Residence, could have made an application before 6 April 2014, under the transitional provisions in paragraph A280(c), for further leave under Part 8 of the Immigration Rules.
- 4.5.3. From 6 April 2014, all those granted leave to enter or remain as a PBS dependant, who then wish to apply for leave as the partner of a settled person (including where their partner who was a relevant PBS migrant gained indefinite leave to remain on the basis of Long Residence) are required to apply for leave under Appendix FM.
- 4.5.4. This is because paragraphs 284 and 295D of the Immigration Rules were amended to restrict switching by PBS dependants who have leave as the partner of a relevant PBS migrant. From 6 April 2014, they are not able to switch into the Rules for partners of settled persons under Part 8. The PBS dependant will either need to apply for indefinite leave under the Points Based System if they can qualify, or apply for limited leave to remain as a partner under Appendix FM.
- 4.5.5. PBS dependants who have already switched to being the partner of a settled person under Part 8 (or have applied to do so before 6 April 2014) can continue under Part 8 and apply for indefinite leave to remain under paragraph 287 or 295G. Their period of leave as a PBS dependant can be combined with their leave as the partner of a settled person to meet the required qualifying period.

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5. Rules and guidance applicable to all applications

5.1. Genuineness guidance

- 5.1.1. Casework guidance on [Genuine and Subsisting Relationship](#) sets out a list of factors associated with genuine and subsisting relationships, and with non-genuine and non-subsisting relationships, and applies to **all** applications for leave to enter or remain in the UK as a partner decided on or after 9 July 2012.
- 5.1.2. Applying this guidance to all applications ensures that the assessment of whether a relationship is 'genuine and subsisting' is dealt with consistently. We consider 'subsisting' under Part 8 to include 'genuine'.

5.2. Paragraph A280AA of the Immigration Rules

- 5.2.1. Following changes to the Immigration Rules which came into effect from 6 April 2015 and apply to all applications decided on or after that date regardless of the date of application, a study condition is to be applied on all adult temporary migrants given limited leave prohibiting them from undertaking studies in particular subjects without first obtaining an Academic Technology Approval Scheme (ATAS) clearance certificate from the Counter-Proliferation Department of the Foreign and Commonwealth Office. Under paragraph [A280AA](#) a person aged 18 or over who is granted limited leave to enter or remain under Part 8, or a person granted such limited leave to enter or remain who will be aged 18 before that period of limited leave expires, will, in addition to any other conditions which may apply, be granted leave subject to the study condition in [Part 15](#) of the Rules.

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6. Appeals on or after 9 July 2012 (for in-country and out-of-country applications)

6.1. Application submitted before 9 July 2012: allowed appeal under the Immigration Rules

- 6.1.1. Where a person submitted an application before 9 July 2012, it was considered and refused under Part 8 and a subsequent appeal against the refusal is allowed under those Rules, and the Secretary of State is not contesting the determination, leave should be granted under the provisions of Part 8 in force at the date of application.
- 6.1.2. Further applications for leave or indefinite leave to remain from such a person will be considered under the transitional provisions in paragraph A280(c) of Part 8.

6.2. Application submitted before 9 July 2012: appeal allowed on or after 9 July 2012 on Article 8 grounds

- 6.2.1. Where a person submitted an application before 9 July 2012 which was refused and their appeal against the refusal was allowed on **Article 8 family life** grounds under the Rules on or after 9 July 2012, and the Secretary of State is not contesting the determination, leave to remain of 30 months' duration should be granted in accordance with paragraph D-LTRP.1.2. or D-LTRPT.1.2. of Appendix FM as appropriate, and subject to paragraphs GEN.1.11A. and GEN.1.14. of Appendix FM on the conditions of leave. Where the Rules are not met, leave to enter outside the Rules of 33 months' duration, or leave to remain of 30 months' duration should be granted as appropriate in accordance with paragraph GEN.1.10. of Appendix FM, and subject to paragraphs GEN.1.11A. and GEN.1.14. of Appendix FM on the conditions of leave.
- 6.2.2. Where a person submitted an application before 9 July 2012 which was refused and their appeal against the refusal was allowed on **Article 8 private life** grounds under the Rules on or after 9 July 2012, and the Secretary of State is not contesting the determination, leave to remain of 30 months' duration should be granted in accordance with paragraph 276BE(1), and subject to paragraphs 276A02 and 276A03 on the conditions of leave. Where the Rules are not met, leave to remain outside the Rules of 30 months' duration should be granted in accordance with paragraph 276BE(2), and subject to paragraphs 276A02 and 276A03 on the conditions of leave.

6.3. Application submitted before 9 July 2012: appeal determined before 9 July 2012: decision implemented on or after 9 July 2012

- 6.3.1. Where a person submitted an application before 9 July 2012 which was refused and their appeal against the refusal was allowed on Article 8 grounds before 9 July 2012, and the Secretary of State is not contesting the determination and this is implemented on or after 9 July 2012, leave should be granted under the Discretionary Leave policy in force on 8 July 2012.

- 6.3.2. The relevant date is the date the appeal was determined and allowed by the judge, rather than the date of promulgation or the date of the actual appeal, where these dates differ.

6.4. Withdrawn appeals

- 6.4.1. Where an individual submitted an application before 9 July 2012 under Part 8 of the Immigration Rules, lodged an appeal following refusal, and then withdrew their appeal and submitted a fresh application for leave on or after 9 July 2012, this fresh application should be considered under Appendix FM and/or paragraphs 276ADE to 276DH as appropriate, and not under the transitional provisions in Part 8.

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7. Reconsideration of cases for in-country and out-of-country applications

7.1.1. Decision makers should refer to the reconsiderations guidance when a request for reconsideration is received:

- [Reconsiderations guidance](#) (internal)
- [Reconsiderations guidance](#) (external)

7.1.2. Where a Pre-Action Protocol (PAP) or Judicial Review has been lodged in which Article 8 was not raised as part of the original application, or where an Article 8 claim was raised as part of that application and was refused, the applicant should be advised that, should they now wish to rely on private or family life in the UK or raise additional factors for new consideration, they must make the appropriate application. The following paragraph should be included in PAP responses where Article 8 has been raised for the first time:

“In your correspondence of [date] under the pre-action protocol you have raised the fact that you also wish to rely on family or private life established in the UK pursuant to Article 8 of the ECHR. However, you did not seek to rely on these grounds as part of your original application. On 9 July 2012 the Immigration Rules were amended and now include provisions for applicants wishing to remain in the UK on the basis of their family or private life. These Rules are in Appendix FM (family life) and paragraph 276ADE(1) (private life). If you wish the Home Office to consider an application on the basis of Article 8, you must make a separate charged application using the appropriate specified application form (FLR(M) for the 5-year partner route, or FLR (FP) for the 10-year partner route, the 5-year or 10-year parent route, or the 10-year private life route). For more information please consult gov.uk: <https://www.gov.uk/government/organisations/uk-visas-and-immigration>.”

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8. Article 8 claims outside the Rules and Discretionary Leave

8.1. Decisions to grant leave on Article 8 grounds on or after 9 July 2012

- 8.1.1. Discretionary Leave is not available to those granted leave on the basis of Article 8 on or after 9 July 2012 (subject to the exceptions detailed above in relation to allowed appeals and to those who have previously been granted Discretionary Leave), irrespective of when the application for leave was made.
- 8.1.2. Some applicants will have applied prior to 9 July 2012 or on or after 9 July 2012 for Article 8 consideration outside the Rules. The transitional provisions in Part 8 of the Immigration Rules do not apply to these cases as they have not made an application under the previous Rules. The current Immigration Rules set out the Secretary of State's view of how the Article 8 balance between the individual's rights and the public interest should be struck. Therefore their Article 8 claim made outside the Immigration Rules should be considered by reference to the current Immigration Rules in Appendix FM (family life) and paragraphs 276ADE to 276DH (private life) and the current policy on exceptional circumstances contained in the published guidance, regardless of the date of application.
- 8.1.3. Where an Article 8 application made outside the Rules is decided on or after 9 July 2012:
- (i) Where the relevant requirements of Appendix FM (family life) are met, a period of 30 months' leave will be granted under the 10-year partner or parent route, as appropriate.
 - (ii) Where the requirements of paragraph 276ADE(1) (private life) are met, a period of 30 months' leave will be granted under the 10-year private life route, and subject to a condition of no recourse to public funds unless the Secretary of State considers that the person should not be subject to such a condition by reference to paragraph 276A00.
 - (iii) Where the requirements of the Immigration Rules are not met but there are exceptional circumstances which warrant a grant of leave outside the Rules on Article 8 grounds, the applicant will normally be granted leave outside the Rules for a period not exceeding 30 months.

All these grants of leave are subject to paragraph GEN.1.11A. of Appendix FM and paragraph 276A02 on whether such leave will be subject to a condition of no recourse to public funds

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9. Long Residence

9.1. 10 Year Long Residence

- 9.1.1. Paragraph 276B(i)(a) of the Immigration Rules allowing those with 10 years' continuous lawful leave in the UK to apply for indefinite leave to remain will continue to operate, where an application is decided on or after 9 July 2012 (irrespective of the date of the application).

9.2. 14 Year Long Residence

- 9.2.1. Paragraph 276B(i)(b) of the Immigration Rules, which provided a route to apply for settlement in the UK after 14 years' residence, lawful or unlawful, was withdrawn on 9 July 2012.
- 9.2.2. No new applications may be made under paragraph 276B(i)(b) from 9 July 2012.
- 9.2.3. Applications made under paragraph 276B(i)(b) which were made before, but not decided by, 9 July 2012, and reconsiderations, will be decided or reconsidered in accordance with that paragraph.
- 9.2.4. Paragraph 276A2 of the Rules was amended on 6 September 2012. This now provides that a person granted an extension of stay on the basis of Long Residence following an application made before 9 July 2012 will remain subject to the Rules in force on 8 July 2012. They will therefore be eligible to apply for indefinite leave to remain in the UK on the basis of 14 years' Long Residence under paragraph 276C if they meet the requirements of paragraph 276B.

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10. Family members of British or settled serving members of HM Forces

- 10.1. Paragraph **A280(d)** of Part 8 provides that applications submitted before 1 December 2013 by partners, children and adult dependent relatives of British or settled serving full-time members of HM Forces, will continue to be dealt with under Part 8 of the Immigration Rules. This includes applications made before 1 December 2013 which had not been decided before that date.
- 10.2. Generally, any application submitted on or after 1 December 2013 by dependants of British or settled serving full-time members of HM Forces, who are not already on the Part 8 route and may not rely on the transitional provisions, will be considered under Appendix Armed Forces to the Immigration Rules. For further information see:

<https://www.gov.uk/government/publications/armed-forces-modernised-guidance>
- 10.3. Applications may continue to be made under paragraphs 297 to 316F of Part 8 by the child of a British Citizen or settled person who is a serving full-time member of HM Forces, regardless of the date of application, and paragraph A280(b) continues to apply to these applications as appropriate.
- 10.4. From 1 December 2013, a new application by a dependent relative of a British Citizen or settled person who is a serving full-time member of HM Forces may no longer be made under paragraphs 317 to 319. Such an application must meet the requirements of Appendix FM. An application made before 1 December 2013 by a dependent relative of a British Citizen or settled person who is a serving full-time member of HM Forces will be considered (as appropriate) under paragraphs 317 to 319.
- 10.5. For the avoidance of doubt, paragraph A280(e) will continue to apply to the spouse, civil partner, unmarried partner or same sex partner of a British Citizen or settled person who was a serving full-time member of HM Forces who (i) was admitted to the UK under paragraph 282(c) or 295B(c); and (ii) has not yet applied for indefinite leave to remain, including where an application relying on paragraph A280(e) is made on or after 1 December 2013.
- 10.6. For full details of the transitional provisions relating to family members of HM Forces applying under Part 8 of the Immigration Rules, see the link below:

<https://www.gov.uk/government/publications/armed-forces-modernised-guidance>
- 10.7. See **section 3.2** of this guidance for changes to suitability requirements for family members of HM Forces.

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11. Parent exercising rights of access to a child

- 11.1. Applications for leave to enter or remain as a person exercising rights of access to a child resident in the UK made before 9 July 2012 will continue to be considered under paragraphs 246 to 248F of the Immigration Rules.
- 11.2. Where an application for leave to enter or remain as the parent of a child in the UK is made on or after 9 July 2012, Appendix FM will apply.

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12. Children

- 12.1. Applications for leave to enter or remain in the UK as a child of a parent, parents or a relative present and settled in the UK, or being admitted to the UK for settlement, remain subject to paragraphs 297 to 300 of Part 8 of the Immigration Rules, regardless of the date of application.
- 12.2. Applications for leave to enter or remain in the UK as a child of a parent or parents with limited leave to enter or remain in the UK with a view to settlement made before 9 July 2012 remain subject to paragraphs 301 to 303 of Part 8 of the Immigration Rules, regardless of the date of decision.
- 12.3. In addition, paragraphs 301 to 303F of Part 8 continue to apply if an application is made by a child on or after 9 July 2012 if the parent was granted limited leave to enter or remain in the UK following an application made before 9 July 2012.
- 12.4. Where an application for leave to enter or remain in the UK as a child of a parent or parents with limited leave to enter or remain in the UK with a view to settlement is made on or after 9 July 2012, Appendix FM will apply.
- 12.5. Applications for leave to enter or remain as a child who is born in the UK but is not a British Citizen, or for indefinite leave to enter or remain as an adopted child or as a child being admitted for the purpose of adoption, remain subject to paragraphs 304 to 313 of Part 8 of the Immigration Rules, regardless of the date of application.
- 12.6. Applications for leave to enter or remain as an adopted child or as a child being admitted for the purpose of adoption, will, regardless of the date of the application or decision, remain subject to paragraphs 314 to 316F of Part 8 of the Immigration Rules, unless the application is made on or after 9 July 2012 under:
 - Paragraph 314(i)(a) or 316A(i)(d) or (e); or
 - Paragraph 314(i)(d) and one of the parents or prospective parents does not have right of abode or indefinite leave to enter or remain, or is not settled in the UK or being admitted for settlement on the same occasion as the applicant.
- 12.7. Where the application is made under those provisions on or after 9 July 2012, the income threshold in paragraph E-ECC.2.1–2.3. or E-LTRC.2.1–2.3. of Appendix FM will apply where a parent who has adopted the child, or is doing so, is subject to the income threshold themselves.

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13. December 2012 changes (HC 760 and 820)

- 13.1. Changes were made by the Statements of Changes (HC 760) and (HC 820) in December 2013 to the family Immigration Rules contained in Appendix FM and Appendix FM-SE.
- 13.2. These changes are retrospective and apply to all decisions made under Appendix FM and Appendix FM-SE from 13 December 2012 regardless of the date of application.
- 13.3. Applications under Appendix FM made before 13 December 2012 but not decided by that date must not be refused because they do not meet a new or revised requirement of the Rules applicable from 13 December 2012 without the applicant being given a reasonable opportunity to demonstrate that they meet that requirement.
- 13.4. This will generally involve the caseworker pausing their consideration of the application and contacting the applicant or their representative in writing or otherwise to request the submission of information or evidence relating to the requirement within a specified timetable (28 days unless the circumstances of the case require differently) set out clearly in the request.
- 13.5. The caseworker should generally accommodate any reasonable request from the applicant for additional time, e.g. to obtain an official document needed to demonstrate the requirement is met, if this is made within the specified period set out in the request.
- 13.6. HC 820 did not affect the application of the changes to the criminality framework in the Statement of Changes HC 760 (which applies to applications made from 13 December 2012) and the guidance above does not apply to the criminality provisions.

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14. Contact for Further Information

This guidance is owned by the Family Policy Team.

Any queries should be directed to FamilyOpsPolicy@homeoffice.gsi.gov.uk

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