

Ben is a Commonwealth citizen with right of abode in the UK. So Ben can enter the UK freely as he is not subject to immigration controls and therefore does not need to comply with the provisions in Appendix FM to the Immigration Rules. (Ben will need a ‘certificate of entitlement’ in his Canadian passport: see 2.3. A check could also be made to see if he is registered as a British citizen and holds, or is entitled to, a British passport: see 2.2.6.2.)

#### **EXAMPLE 2**

Carla is a citizen of The Philippines. She married Denis, a British citizen, whilst he was on holiday in The Philippines last month. Denis has just returned to the UK without Carla. She has not yet agreed to join him in the UK. She intends to apply for a visa to enter the UK as a standard visitor in order to decide whether she would wish to live in the UK with Denis.

In principle, Carla could obtain a standard visitor visa, but she would need to satisfy the ECO that she did intend to leave the UK at the end of her visit (see 5.2).

### **8.3 ENTRY CLEARANCE AS A PARTNER**

#### **8.3.1 Who is a partner?**

A partner, for the purposes of Appendix FM (see para GEN 1.2), is:

- (a) the applicant’s spouse;
- (b) the applicant’s civil partner;
- (c) the applicant’s fiancé(e) or proposed civil partner; or
- (d) 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.

For (a) and (b) the parties must have entered into a valid marriage or valid civil partnership (see 8.3.5.6).

For (c) the parties must intend to marry or enter into a civil partnership within six months of entering the UK (see 8.3.5.7).

As to (d), Home Office guidance is that ‘living together with’ should be applied fairly tightly, in that the couple should show evidence of cohabitation for the preceding two-year period. Short breaks apart may be acceptable for good reasons, such as work commitments or looking after a relative, which take one partner away for a period of up to six months, where it was not possible for the other partner to accompany the first partner and it can be seen that the relationship continued throughout that period by visits, letters, etc. The phrase ‘akin to a marriage or civil partnership’ is said to refer to a relationship that is similar in its nature to a marriage or a civil partnership, which therefore includes both heterosexual and same-sex relationships. In order to demonstrate a two-year relationship, evidence of cohabitation is needed. In order to show a relationship akin to a marriage or a civil partnership, the Home Office looks for evidence of a committed relationship. The following type of supporting evidence might therefore be useful in this respect:

- joint commitments (such as joint bank accounts, joint investments, joint tenancy agreement, joint mortgage account, etc);
- if there are children of the relationship, a full birth or adoption certificate naming the parties as parents;
- correspondence which links them to the same address (eg household bills in joint names, etc); and

- any official records of their address (eg doctors and dentist records, government records, etc).

**EXAMPLE 1**

Zach and Yvonne are engaged to be married. Zach is a visa national. Yvonne is a British citizen. The couple are living in Zach's home country, but they now wish to travel to the UK to get married and set up home together.

Zach can apply to enter the UK under Appendix FM to the Immigration Rules as Yvonne's partner (fiancé), provided they intend to marry within six months of entering the UK.

**EXAMPLE 2**

David is a British citizen. He has worked abroad for several years and for the last 18 months has been living in the USA with John, an American citizen. David now wishes to return to the UK and John wishes to travel with him. If John is admitted to the UK he intends to live with David permanently, but the couple do not wish to enter into a civil partnership.

David and John are not civil partners, neither do they intend to enter into a civil partnership. They have not been living in a relationship akin to a civil partnership for at least two years prior to the date of John's wishing to make an application. So the couple's relationship will need to continue for another six months before John can apply under Appendix FM to the Immigration Rules as David's partner.

**EXAMPLE 3**

Alice and Brian are both citizens of New Zealand. They were both born there and have never been to the UK before. They have recently married and now wish to travel to the UK to set up home together. Whilst they are both Commonwealth citizens, neither has the right of abode in the UK.

Appendix FM to the Immigration Rules does not apply. Whilst the couple are partners (spouses), neither Alice nor Brian is a British citizen or settled in the UK, or in the UK with limited leave as a refugee or person granted humanitarian protection.

### 8.3.2 An overview of the requirements

The requirements in Appendix FM to be met for entry clearance as a partner (see para EC-P.1.1) are that:

- the applicant must be outside the UK;
- the applicant must have made a valid application for entry clearance as a partner;
- the applicant must not fall for refusal under any of the grounds in Section S-EC: Suitability—entry clearance (see 8.3.3); and
- the applicant must meet all of the requirements of Section E-ECP: Eligibility for entry clearance as a partner (see 8.3.4).

### 8.3.3 Suitability requirements in detail

Section S-EC, paras S-EC.1.2 to S-EC.1.9 set out the following mandatory grounds on which an ECO will refuse an application:

- S-EC.1.2 The Secretary of State has personally directed that the exclusion of the applicant from the UK is conducive to the public good.
- S-EC.1.3 The applicant is at the date of application the subject of a deportation order.
- S-EC.1.4 The exclusion of the applicant from the UK is conducive to the public good because they have been convicted of an offence for which they have been sentenced to a period of

imprisonment of (a) at least 4 years; or (b) at least 12 months but less than 4 years, unless a period of 10 years has passed since the end of the sentence; or (c) of less than 12 months, unless a period of 5 years has passed since the end of the sentence. Where this paragraph applies, unless refusal would be contrary to the Human Rights Convention or the Convention and Protocol Relating to the Status of Refugees, it will only be in exceptional circumstances that the public interest in maintaining refusal will be outweighed by compelling factors.

- S-EC.1.5 The exclusion of the applicant from the UK is conducive to the public good or because, for example, the applicant's conduct (including convictions which do not fall within S-EC.1.4.), character, associations, or other reasons, make it undesirable to grant them entry clearance.

(For each of the above, see further Chapter 10.)

- S-EC.1.6 The applicant has failed without reasonable excuse to comply with a requirement to –
- (a) attend an interview;
  - (b) provide information;
  - (c) provide physical data; or
  - (d) undergo a medical examination or provide a medical report.
- S-EC.1.7 It is undesirable to grant entry clearance to the applicant for medical reasons.
- S-EC.1.8 The applicant left or was removed from the UK as a condition of a caution issued in accordance with section 22 of the Criminal Justice Act 2003 less than 5 years prior to the date on which the application is decided.
- S-EC.1.9 The Secretary of State considers that the applicant's parent or parent's partner poses a risk to the applicant. That person may be considered to pose a risk to the applicant if, for example, they –
- (a) have a conviction as an adult, whether in the UK or overseas, for an offence against a child;
  - (b) are a registered sex offender and have failed to comply with any notification requirements; or
  - (c) are required to comply with a sexual risk order made under the Anti-Social Behaviour, Crime and Policing Act 2014 and have failed to do so.

Paragraphs S-EC.2.2, 2.4 and 2.5 set out the following discretionary grounds on which an ECO will normally refuse an application:

- S-EC.2.2 Whether or not to the applicant's knowledge –
- (a) false information, representations or documents have been submitted in relation to the application (including false information submitted to any person to obtain a document used in support of the application); or
  - (b) there has been a failure to disclose material facts in relation to the application.
- S-EC.2.4 A maintenance and accommodation undertaking has been requested or required under paragraph 35 of these Rules or otherwise and has not been provided.
- S-EC.2.5 The exclusion of the applicant from the UK is conducive to the public good because (a) within the 12 months preceding the date of the application, the person has been convicted of or admitted an offence for which they received a non-custodial sentence or other out of court disposal that is recorded on their criminal record; or (b) in the view of the Secretary of State (i) the person's offending has caused serious harm; or (ii) the person is a persistent offender who shows a particular disregard for the law.

Note that despite the wording of para S-EC.2.2, Home Office guidance on (b) is that refusal for failure to disclose material facts in relation to the application can be imposed only where the applicant acts with knowledge. An applicant must not therefore be refused on the grounds that he unknowingly failed to disclose material facts in relation to his application.

Note that para S-EC.3.1 provides that the applicant may be refused on grounds of suitability if he has failed to pay litigation costs awarded to the Home Office. In addition, para S-EC.3.2

provides for refusal if one or more relevant NHS bodies has notified the Secretary of State that the applicant has failed to pay charges of £500 or more in accordance with the relevant NHS regulations.

### 8.3.4 Eligibility requirements in outline

An applicant must meet all of the eligibility requirements in paras E-ECP.2.1 to E-ECP.4.2. Broadly these are as follows:

- (a) relationship requirements (see 8.3.5);
- (b) financial requirements (see 8.3.6)
- (c) accommodation requirements (see 8.3.7); and
- (d) English language requirement (see 8.3.8).

### 8.3.5 Relationship requirements (paras E-ECP.2.1 to E-ECP.2.10)

#### 8.3.5.1 Immigration status of applicant's partner

By para E-ECP.2.1, the applicant's partner must be:

- (a) a British citizen in the UK; or
- (b) present and settled in the UK; or
- (c) in the UK with refugee leave or with humanitarian protection.

For (a) and (b), does this mean that the application will be refused if the British citizen or person settled in the UK is currently living abroad with his partner and will be travelling with the partner to the UK? No, because para GEN.1.3(b) provides that 'references to a person being present and settled in the UK also include a person who is being admitted for settlement on the same occasion as the applicant'. Paragraph 6 of the Immigration Rules also defines 'present and settled' as meaning that the person concerned is settled in the UK and, at the time that an application under the Rules is made, is physically present here or is coming here with or to join the applicant, and intends to make the UK his home with the applicant if the application is successful. In addition, note that para GEN.1.3(c) states that 'references to a British Citizen in the UK also include a British Citizen who is coming to the UK with the applicant as their partner'.

The relationships of fiancé(e) and proposed civil partner are not recognised by EU law (see 4.4.6.6). So in what circumstances can an EEA national satisfy (b) above? Paragraph 6 of the Immigration Rules provides the answer: it is when an EEA national holds a registration certificate or a document certifying permanent residence issued under the 2016 Regulations (see 4.4.14).

#### 8.3.5.2 Minimum age

By paras E-ECP.2.2 and E-ECP.2.3, both the applicant and his partner must be aged 18 or over at the date of application.

#### 8.3.5.3 Relationship not within prohibited degree

By para E-ECP.2.4, the applicant and his partner must not be within any prohibited degree of relationship. Three statutory provisions apply, as follows:

- (a) The Marriage Act 1949 prohibits a marriage by a man to any of the persons mentioned in **Table 8.1** below, and prohibits a marriage between a woman and any of the persons mentioned in **Table 8.2** below.

**Table 8.1 Prohibited degrees for a man**

Mother
Daughter

**Table 8.2 Prohibited degrees for a woman**

Father
Son

Father's mother	Father's father
Mother's mother	Mother's father
Son's daughter	Son's son
Daughter's daughter	Daughter's son
Sister	Brother
Father's sister	Father's brother
Mother's sister	Mother's brother
Brother's daughter	Brother's son
Sister's daughter	Sister's son

- (b) The Marriage (Prohibited Degrees of Relationship) Act 1986 prohibits a marriage between those listed in **Table 8.3** below 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.

**Table 8.3 Prohibited degrees**

Daughter of former wife
Son of former husband
Former wife of father
Former husband of mother
Former wife of father's father
Former husband of father's mother
Former wife of mother's father
Former husband of mother's mother
Daughter of son of former wife
Son of son of former husband
Daughter of daughter of former wife
Son of daughter of former husband

- (c) The Marriage (Prohibited Degrees of Relationship) Act 1986 also prohibits a marriage between those listed in **Table 8.4** below.

**Table 8.4 Prohibited degrees**

Mother of former wife, until the death of both the former wife and the father of the former wife
Father of former husband, until after the death of both the former husband and the mother of the former husband
Former wife of son, until after the death of both his son and the mother of his son
Former husband of daughter, until after the death of both her daughter and the father of her daughter

#### 8.3.5.4 The parties have met in person

Paragraph E-ECP.2.5 requires the applicant and his partner to have met in person. What does this mean?

The Home Office guidance, following *Meharban v ECO, Islamabad* [1989] Imm AR 57, is that 'met' requires the parties to have 'made the acquaintance of one another'. This need not have

been in the context of marriage or a civil partnership. So if, for example, the parties had originally been childhood friends, perhaps going to the same school for several years, they may be said to have met in person and become acquainted.

'Met' implies a face-to-face meeting which results in the making of mutual acquaintance. There is a requirement of 'at least an appreciation by each party of the other in the sense of, for example, appearance and personality'. Therefore a relationship developed over the Internet by Facebook messages, Skype calls or the like would potentially satisfy this requirement, but only if it includes a personal face-to-face meeting between the couple which itself results in the making of their mutual acquaintance. Evidence of a face-to-face meeting might include travel documents, photographs, statements from witnesses, or relevant email or text message exchanges detailing meetings.

#### 8.3.5.5 The relationship is genuine and subsisting

Paragraph E-ECP.2.6 requires the relationship between the applicant and his partner to be genuine and subsisting. Neither term is defined in the Immigration Rules or the Home Office guidance. However, in GA ('*Subsisting' marriage*) Ghana [2006] UKAIT 00046, the Tribunal held that the requirement that a relationship is subsisting requires more than just double-checking the legal status of that relationship. The nature and quality of the substance of the relationship – therefore including whether or not it is genuine – is under scrutiny. As the Tribunal indicated at para 14, this means that when assessing the subsistence of a relationship, the decision maker:

will plainly have to bear in mind the cultural context and the wide differences that exist between individual lifestyles, whether by choice, or by circumstances, or by economic necessity. He will also be able to put the claim into the context of the history of the relationship and to assess whether and to what extent this illuminates the nature of the parties' present relationship and future intentions.

Home Office guidance to its decision makers is that they must be alert and sensitive to the extent to which religious and cultural practices may shape the factors present or absent in a particular case, particularly at the entry clearance and leave to remain stages. For example, a couple in an arranged marriage may have spent little, if any, time together prior to the marriage. For many faiths and cultures marriage marks the start of a commitment to a lifelong partnership and not the affirmation of a pre-existing partnership. Home Office guidance is that its decision makers must also take into account normal practices for marriages and family living according to particular religious and cultural traditions. In particular, evidence of pre-marital cohabitation and joint living arrangements can be a factor associated with a genuine relationship; equally, their absence can be too. In some cultures it is traditional for the household accounts, bills, etc to be in the name of the male head of the household (who could be the male partner, or his father or grandfather).

Home Office guidance makes it clear that its decision makers have discretion to grant or refuse an application based on their overall assessment, regardless of whether one or more of the factors contained in the guidance is, or is not, present in the case. As the guidance stresses, consideration of whether a relationship is genuine and subsisting is not a checklist or tick-box exercise.

It is for the applicant to show the requirement is met on the balance of probabilities: see *Naz (subsisting marriage – standard of proof)* Pakistan [2012] UKUT 00040.

In assessing whether a relationship is genuine and subsisting, Home Office guidance to its decision makers as to what factors might be taken into account is as follows:

**Factors which may be associated with a genuine and subsisting relationship**

- (i) The couple are in a current, long-term relationship and are able to provide satisfactory evidence of this.
- (ii) The couple have been or are co-habiting and are able to provide satisfactory evidence of this.

- (iii) The couple have children together (biological, adopted or step-children) and shared responsibility for them.
- (iv) The couple share financial responsibilities, eg a joint mortgage/tenancy agreement, a joint bank account and/or joint savings, utility bills in both their names.
- (v) The partner and/or applicant have visited the other's home country and family and are able to provide evidence of this. (The fact that an applicant has never visited the UK must not be regarded as a negative factor, but it is a requirement of the Immigration Rules that the couple have met in person).
- (vi) The couple, or their families acting on their behalf, have made definite plans concerning the practicalities of the couple living together in the UK.
- (vii) In the case of an arranged marriage, the couple both consent to the marriage and agree with the plans made by their families.

**Factors which may prompt additional scrutiny**

Further enquiries may be required to accept a marriage as valid for immigration purposes where:

- the marriage was a church marriage in a Muslim country
- it was a religious or a customary marriage which has not been registered with the civil authorities of the country in which it was celebrated
- the person's country of domicile is unclear, especially where their country of domicile would mean the type of marriage or civil partnership entered into would not be valid
- a previous marriage or civil partnership was ended by a divorce or dissolution obtained in a different country from the one where it was celebrated, and neither partner was:
  - habitually resident in the country where the divorce or dissolution was obtained
  - a national of the country where the divorce or dissolution was obtained or domiciled in the country (or US state) where the divorce or dissolution was obtained.
- the marriage or civil partnership took place in the UK, a report – of a suspicious sham marriage or civil partnership – was made by a registration officer under section 24 or 24A of the Immigration and Asylum Act 1999
- there is evidence from a reliable third party (for example the Forced Marriage Unit (FMU), police, social services, registration officer, or a minister of religion) which indicates that the marriage or civil partnership is, or may be a sham or a forced marriage or partnership of convenience (it may not be possible for this information to be used in any refusal notice)
- there is an allegation or other information suggesting that this is a forced marriage or that the marriage or civil partnership may not be genuine or that the couple are not living together
- the applicant or their partner does not appear to have the capacity to consent to the marriage, civil partnership or relationship, for example one has or both parties have learning difficulties
- there is evidence of unreasonable restrictions being placed on the applicant or partner, for example, being kept at home by their family, being subject to unreasonable financial restrictions, attempts to prevent the police or other agencies having reasonable, unrestricted access to the applicant or partner
- the applicant or partner fail to attend an interview, without reasonable explanation, where required to do so to discuss the application or their welfare, or seeking to undermine the ability of the Home Office to arrange an interview, for example unreasonable delaying tactics by the couple or a third party
- the couple is unable to provide any information about their intended living arrangements in the UK or about the practicalities of the applicant moving to the UK
- the circumstances of the wedding or civil ceremony or reception, for example, no or few guests and/or no significant family members present
- the couple are unable to provide accurate personal details about each other
- the couple are unable to communicate with each other in a language understood by them both
- there is evidence of money having been exchanged for the relationship to be contracted, unless it is part of a dowry
- there is a lack of appropriate contribution to the responsibilities of the marriage, civil partnership or relationship, for example, a lack of shared financial or other domestic responsibilities

- co-habitation is not maintained, or there is little or no evidence that they have ever co-habited
- the applicant is a qualified medical practitioner or professional, or has worked as a nurse or carer, and the partner has a mental or physical impairment which currently requires medical assistance or personal care in their own accommodation
- the partner has previously sponsored another partner to come to or remain in the UK or, if applicable, claimed to be married or in a civil partnership in reply to an asylum questionnaire
- the partner has previously been sponsored as a partner to come to or remain in the UK (for example, the partner obtained settlement on this basis) and that marriage, partnership or relationship ended shortly after the partner obtained settlement (excluding circumstances where the partner is a bereaved partner, or where the partner obtained settlement on the basis of domestic violence perpetrated by their former partner)
- the partner was married to or in a civil partnership with the applicant at an earlier date, married or formed a partnership with another person, and is now sponsoring the original partner to come to or remain in the UK
- the past history of the partner and/or the applicant contains evidence of a previous sham marriage, civil partnership or forced marriage, or of unlawful residence in the UK or elsewhere
- the applicant has applied for leave to enter or remain in the UK in another category and been refused prior to making their application on the basis of their relationship with a partner
- the marriage or civil partnership has taken place overseas in a country that is not an obvious or popular destination for a marriage or civil partnership and has no obvious links to the couple

#### **When an application can be refused**

Entry clearance or leave should be refused if a decision maker is satisfied the relationship is not genuine and subsisting because there is:

- a public statement (a disclosable statement that is not in confidence) made by the applicant or partner that their marriage or civil partnership is a sham or one of convenience or has broken down permanently
- a public statement (a disclosable statement that is not in confidence) made by the applicant or partner that they have been forced into marriage
- evidence that a sibling of the partner or applicant has been forced into marriage
- the applicant, partner or an immediate family member of either, is or has been the subject or respondent of a forced marriage protection order under the Forced Marriage (Civil Protection) Act 2007, or the Forced Marriage (Protection and Jurisdiction) (Scotland) Act 2011.

#### **8.3.5.6 Valid marriage or civil partnership**

Paragraph E-ECP.2.7 states that if the applicant and partner are married or in a civil partnership, it must be a valid marriage or civil partnership, as specified.

Home Office guidance is that the type of marriage must be recognised in the country in which it took place, it must satisfy the legal requirements of that country and there must not be anything in the law of either party's country of domicile that restricted their freedom to enter into the marriage.

Home Office guidance includes a list of countries where it recognises a civil partnership as valid.

#### **8.3.5.7 Fiancé(e) or proposed civil partner entering UK for marriage or civil partnership**

Paragraph E-ECP.2.8 states that if the applicant is a fiancé(e) or proposed civil partner, he must be seeking entry to the UK to enable his marriage or civil partnership to take place. The couple will usually need to produce adequate documentary evidence of the arrangements already made in the UK for the marriage or civil partnership ceremony.

#### **8.3.5.8 Any previous relationship broken down permanently**

Paragraph E-ECP.2.9 provides that if the applicant and/or his partner has previously been married or in a civil partnership, the applicant must provide suitable evidence that that relationship has ended (eg decree absolute of divorce, or dissolution order terminating a civil

partnership), unless it is a polygamous marriage or civil partnership which falls within para 278(i) of the Immigration Rules. Home Office guidance includes further details.

In addition, if the applicant is a fiancé(e) or proposed civil partner, neither the applicant nor his or her partner must be married to, or in a civil partnership with, another person at the date of application.

#### **8.3.5.9 Intention to live together permanently in the UK**

By para E-ECP.2.10, the applicant and his partner must intend to live together permanently in the UK. Paragraph 6 of the Immigration Rules defines this as 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.

There is an obvious overlap here with the requirement in para E-ECP.2.6 that the relationship between the applicant and his partner is genuine and subsisting (see **8.3.5.5**), since a relationship that is found to be a sham is a relationship where the parties have no intention of living together at all.

A decision maker may question whether parties meet this requirement if they have lived apart following their marriage or civil partnership. Usually the couple will respond by producing an explanation for the separation, and details of letters sent and telephone calls made during this period, to illustrate their ‘intervening devotion’.

In the case of *Amarjit Kaur* [1999] INLP 110, the Immigration Judge had found that the applicant’s ‘overriding wish was to marry someone from abroad. The letters and phone calls were evidence, not of intervening devotion, but merely of intervening contact’. No further evidence of letters or phone calls was produced to the Tribunal, and although the sponsor had visited his wife in India, the appeal was dismissed. The Immigration Judge had taken a dim view of the fact that the sponsor was a divorcée, 20 years older than the applicant, and that the applicant had turned down Indian-based suitors in order to marry the sponsor. The Tribunal did not demur from that.

Contrast *Amarjit Kaur* with the case of *Goudéy (subsisting marriage – evidence)* Sudan [2012] UKUT 00041 (IAC). There the Tribunal concluded that the applicant and her partner were

the right age for each other, and the [partner] as a young man would undoubtedly be of an age when he would want to have the company of a wife. She appears to have moved homes when the marriage was being arranged. He travelled to Egypt to meet his wife and there is some evidential support for the proposition given in his oral account that the relationship was conducted by telephone. We see no basis on which the judge could dismiss the consistent evidence that they intended to live together as man and wife as lacking in credibility.

The question whether parties intend to live together permanently in the UK is basically one of fact, and decisions often turn on the credibility of the available evidence.

#### **8.3.6 Financial requirements (paras E-ECP.3.1 to 3.3)**

##### **8.3.6.1 Overview**

When applying for entry clearance (and usually for leave to remain and settlement: see **8.4** and **8.6** respectively) the applicant will have to provide specified documentary evidence that a prescribed minimum gross annual income is available. Home Office guidance is that this sets a benchmark for financial stability and independence on the part of the couple. However, a different test will apply if the applicant’s partner is at the time of the application in receipt of certain UK welfare benefits (see **8.3.6.9**).

To satisfy the financial requirement the applicant will have to meet all of the following:

- (a) the level of financial requirement applicable to the application under Appendix FM (see 8.3.6.2); and
- (b) the requirements specified in Appendix FM and Appendix FM-SE as to:
  - (i) the permitted sources of income and savings (see 8.3.6.3 to 8.3.6.7);
  - (ii) the time periods and permitted combinations of sources applicable to each permitted source relied on (see 8.3.6.3 to 8.3.6.7); and
  - (iii) the documentary evidence required for each permitted source relied upon (see 8.3.6.8).

### 8.3.6.2 The prescribed minimum gross annual income

Currently, by para E-ECP.3.1, the applicant must provide specified evidence, from the sources listed in para E-ECP.3.2, of a specified gross annual income of at least £18,600.

What if the applicant's child or children will be living with the couple in the UK? An extra £3,800 is required for the first child and a further £2,400 for each additional child.

#### **EXAMPLE**

Ivan, a citizen of Russia, has recently married Judith, a British citizen. Ivan and his 8-year-old twin daughters, Olga and Nina, are applying under Appendix FM to the Immigration Rules to enter the UK where they will live with Judith and her 6-year-old son, Mark. Both Judith and Mark are British citizens. What gross annual income must Ivan demonstrate?

The answer is £24,800 (£18,600 for Ivan; £3,800 for Olga; and £2,400 for Nina).

For these purposes, a 'child' means a dependent child of the applicant or the applicant's partner who is:

- (a) under the age of 18 years, or who was under the age of 18 years when they were first granted entry under this route;
- (b) applying for entry clearance as a dependant of the applicant or the applicant's partner, or is in the UK with leave as their dependant;
- (c) not a British Citizen or settled in the UK; and
- (d) not an EEA national with a right to be admitted to or reside in the UK under the Immigration (EEA) Regulations 2016 (see Chapter 4).

So, in the example above, Mark, a British citizen, although a dependent child of the applicant's partner, Judith, does not count as a 'child' when calculating Ivan's prescribed minimum gross income.

Note that the set amount of £18,600 was held in *MM (Lebanon) v Secretary of State for the Home Department* [2013] EWHC 1900 (Admin) to disproportionately interfere with the ability of partners to live together contrary to their rights under the Article 8 ECHR. However, the Government successfully overturned that decision in the Court of Appeal; see [2014] EWCA Civ 985. Subsequently, the Supreme Court ([2017] UKSC 10) also upheld the set amount but made certain recommendations for revisions to Appendix FM. The Secretary of State's response was to amend the Immigration Rules in July 2017 and these changes are included in this chapter.

### 8.3.6.3 Meeting the prescribed minimum gross annual income

Paragraph E-ECP.3.2 sets out the only financial resources that count, namely:

- (a) income of the partner from specified employment or self-employment, which, in respect of a partner returning to the UK with the applicant, can include specified employment or self-employment overseas and in the UK;

- (b) specified pension income of the applicant and partner;
- (c) any specified maternity allowance or bereavement benefit received by the partner in the UK;
- (d) other specified income of the applicant and partner; and
- (e) specified savings of the applicant and partner.

It is clear from the above that certain financial resources on which a couple might wish to rely are excluded. Importantly, para E-ECP.3.2 has the effect of overruling the Supreme Court decision in *Ahmed Mahad* (previously referred to as AM) (Ethiopia) v ECO [2009] UKSC 16, as financial support from a third party, such as relatives or community groups, cannot be counted. If third parties wish to assist a couple, they might do so by gifting them money which can then count towards the couple's savings, provided it is received at least six months before the date of the application (see **Category D** below). There must be exceptional circumstances before third party support can be taken into account (see **8.3.6.8**).

Home Office guidance is that the allowable financial resources can be used to meet the financial requirements in seven different possible ways, which it categorises A to G as follows.

#### **Category A: salaried employment for the last six months**

Where the applicant's partner is resident in the UK and is in salaried employment at the date of the application and has been with the same employer for at least the last six months, the applicant can count the gross annual salary (at its lowest level in those six months if there has been any increase) towards the financial requirement.

If necessary to meet the level of the financial requirement applicable to the application, the applicant can add to this, as permitted, from Categories C, D and E (see below).

#### **EXAMPLE OF SALARIED EMPLOYMENT IN UK**

The applicant's partner, Alan, is employed in the UK, earning £20,000 gross a year. He has worked for the same firm for over a year. The applicant has no dependent children. Alan should meet the financial requirement under Category A (subject to checking all his salary counts: see **8.3.6.4**).

Note that if Alan had been promoted into his current role within the last six months from a salary of £18,000, he can only use that lower figure for Category A purposes. If he wants to use the higher figure, he will have to delay his application until it has been paid to him for at least six months. Whenever he makes his application, he can combine his Category A salary with any income available from Categories C, D and E.

But what if the applicant's partner meets the above requirement in respect of salaried employment abroad and is returning with the applicant to the UK to take up employment here? In these circumstances the partner must also have confirmed salaried employment to return to in the UK, starting within three months of their return. This must have an annual starting salary sufficient to meet the financial requirement applicable to the application either alone or in combination with any, or all, of the items in Categories C, D and E as permitted.

#### **EXAMPLE OF SALARIED EMPLOYMENT OUTSIDE UK**

The applicant's partner, Heidi, is currently employed abroad, earning £25,000 gross a year. She has worked for the same firm for the last nine months. She has no dependent children. She has a signed contract of employment with a UK-based employer which has a starting salary of £30,000 and a start date within three months of her planned return to the UK. Heidi should meet the financial requirement under Category A (subject to checking that all her salary counts: see **8.3.6.4**).

For what counts as salaried employment, see 8.3.6.4.

#### **Category B: salaried employment for less than the last six months**

Under Category B, salaried employment at the date of the application with the same employer but for less than the last six months counts in the same way as Category A above, but only if an additional test is met. The couple must also have received in the 12 months prior to the application the level of income required to meet the financial requirement based only on:

- (a) the gross salaried employment income of the applicant's partner (and/or the applicant if he is in the UK with permission to work and applying for leave to remain or settlement);
- (b) the gross amount of any specified non-employment income received by the applicant's partner, the applicant or both jointly;
- (c) the gross amount of any State (UK or foreign) or private pension received by the applicant's partner or the applicant; and/or
- (d) the gross amount of any UK maternity allowance, bereavement allowance, bereavement payment and widowed parent's allowance received by the applicant's partner or the applicant.

#### **EXAMPLE**

The applicant's partner, Brenda, is employed in the UK. She started her current employment last month. Her gross annual salary is £32,500. Over the last 12 months she has had two other salaried jobs and earned £28,750 from these in total. The applicant has no dependent children.

Brenda will not qualify under Category A above as she has not been with the same employer for at least six months. However, she will qualify under Category B as she has earned more than £18,600 in the last 12 months from salaried employment and is currently in employment at a salary of at least £18,600. This is subject to checking that all her salary payments count: see 8.3.6.4.

Category B operates differently where the applicant's partner is abroad and returning with the applicant to the UK to take up employment. The partner does not have to be in employment abroad at the date of application. Instead, the following two tests must be met.

First, the couple returning to the UK must have received in the 12 months prior to the application the level of income required to meet the financial requirement, based only on:

- (a) the gross salaried employment income overseas of the applicant's partner;
- (b) the gross amount of any specified non-employment income received by the applicant's partner, the applicant or both jointly;
- (c) the gross amount of any state (UK or foreign) or private pension received by the applicant's partner or the applicant; and/or
- (d) the gross amount of any UK maternity allowance, bereavement allowance, bereavement payment and widowed parent's allowance received by the applicant's partner or the applicant.

Secondly, the applicant's partner must in addition have confirmed salaried employment to return to in the UK (starting within three months of his return). This must have an annual starting salary sufficient to meet the financial requirement applicable to the application either alone or in combination with any, or all, of the items in Categories C, D and E as permitted.

For what counts as salaried employment, see 8.3.6.4.

### **Category C: specified non-employment income**

The specified non-employment income (see 8.3.6.5) (excluding pension under Category E below) the applicant's partner and/or the applicant have/has received in the 12 months prior to the application can count towards the applicable financial requirement, provided they continue to own the relevant asset (eg property, shares, etc) at the date of application.

The gross amount of any UK maternity allowance, bereavement allowance, bereavement payment and widowed parent's allowance received by the applicant's partner or the applicant in the 12 months prior to the application can be used in combination with other income for that period as described.

Only the above UK welfare benefits count. So even if the applicant's partner receives other benefits, such as tax credits, child benefit, universal credit, council tax benefit, etc, these cannot count.

This income may also be used in combination with other categories as described.

### **Category D: cash savings**

An amount based on any cash savings above £16,000 held by the applicant's partner, the applicant or both jointly for at least six months prior to the application and under their control, can count towards the applicable financial requirement.

At entry clearance and the leave to remain stages, the amount above £16,000 must be divided by 2.5 (to reflect the 2.5 year or 30-month period before the applicant will have to make a further application) to give the amount which can be used. Mathematically, the calculation is the following equation:  $(S - £16,000) \div 2.5 = C$  where S is the total amount of cash savings under the control of the applicant, their partner, or both jointly for at least the 6 months prior to the date of the application of entry clearance or leave to remain and C is the amount of Category D cash savings which can be used towards the financial requirement.

On an application for indefinite leave to remain, the whole of the amount above £16,000 can be used. Mathematically, the calculation is the following equation:  $(S - £16,000) = C$  where S is the total amount of cash savings under the control of the applicant, their partner, or both jointly for at least the 6 months prior to the date of the application for settlement and C is the amount of Category D cash savings which can be used towards the financial requirement.

The amount based on cash savings may also be used in combination with other categories as described. What follows is an example where Categories A, C and D are combined.

#### **EXAMPLE**

The applicant's partner, Janice, a British citizen, is in employment in the UK at the date of her husband's application for entry clearance under Appendix FM. The couple have no dependent children.

Janice has been working for the same employer for at least 6 months prior to the date of the application, earning a gross annual salary for the purposes of Category A of £10,100 during that time (subject to checking that all her salary counts: see 8.3.6.4).

Janice receives non-employment income from a rental property that she owns, and continues to own, in Canada, and in the 12 months prior to the date of her husband's application she received for the purposes of Category C a gross rental income of £7,250.

Janice has cash savings of £25,000 in a UK bank account. She has held those savings for at least 6 months prior to the date of her husband's application. The amount of savings for the purposes of Category D that can be used towards the financial requirement is  $(£25,000 - £16,000) \div 2.5 = £3,600$ .

Janice's husband's application requires a prescribed minimum gross annual income of £18,600. That is met by using a combination of income categories A, C and D, namely £10,100 + £7,250 + £3,600 = £20,950.

For further details, see 8.3.6.6.

#### **Category E: pension**

The gross annual income from any State (UK basic State pension and additional or second State pension, or foreign) or private pension received by the applicant's partner or the applicant can count towards the applicable financial requirement. The annual amount may be counted where the pension has become a source of income at least 28 days prior to the application. This income can also be used in combination with other categories as described.

The gross amount of any State (UK or foreign) or private pension received by the applicant's partner or the applicant in the 12 months prior to the application can be used, alone or in combination with other income, for that period as described.

#### **Category F: self-employment (last financial year)**

The applicant's partner (and/or the applicant if he is in the UK with permission to work and applying for leave to remain or settlement) must be in self-employment at the date of the application and in the last full financial year received self-employment and other income (salaried, specified non-employment and pension) sufficient to meet the applicable financial requirement.

Note that cash savings cannot be used in combination with Category F.

#### **EXAMPLE**

The applicant's partner, Noel, is currently self-employed in the UK and in the last full financial year earned £20,575. The applicant has no dependent children.

Noel will qualify under Category F as he is currently self-employed and in the last full financial year earned at least £18,600.

#### **Category G: self-employment (last two financial years)**

The applicant's partner (and/or the applicant if he is in the UK with permission to work and applying for leave to remain or settlement) must be in self-employment at the date of the application and as an average of the last two full financial years received self-employment and other income (salaried, specified non-employment and pension) sufficient to meet the applicable financial requirement.

Note that cash savings cannot be used in combination with Category G.

#### **8.3.6.4 Further details about Categories A and B**

For the purposes of Categories A and B, what counts as salaried employment?

Employment may be full-time or part-time. It can also be permanent, a fixed-term contract or with an agency.

What counts as income from salaried employment for the purposes of Categories A and B?

Basic pay, skills-based allowances and UK location-based allowances will be counted as income provided that (i) they are paid under the employee's contract of employment and (ii) where these allowances make up more than 30% of the total salary, only the amount up to 30% will be counted.

Overtime, payments to cover travel time, commission-based pay and bonuses (which can include tips and gratuities paid via a tronc scheme registered with HMRC) will be counted as income, where they have been received in the relevant period of employment or self-employment relied on in the application.

What does not count as income from salaried employed for the purposes of Categories A and B?

Payments relating to the costs of (a) UK or overseas travel, including, for example, travelling or relocation expenses, (b) subsistence or accommodation allowances and (c) payments made towards the costs of living overseas will not be counted as income.

#### 8.3.6.5 Further details about Category C

What income falls within Category C? The specified sources of non-employment income are:

- (a) dividends or other income from investments, stocks, shares, bonds and trust funds;
- (b) property rental income;
- (c) interest from savings;
- (d) maintenance payments from a former partner in relation to the applicant and former partner's child or children dependent on and cared for by the applicant; and
- (e) UK Maternity Allowance, Bereavement Allowance, Bereavement Payment and Widowed Parent's Allowance.

The income at (d) above is derived from the Immigration Rules, Appendix FM-SE, para A1.1.1(b)(i), which provides that:

Existing sources of third party support will be accepted in the form of payments from a former partner of the applicant for the maintenance of the applicant or any children of the applicant and the former partner, and payments from a former partner of the applicant's partner for the maintenance of that partner.

#### **EXAMPLE**

Joanne, a visa national, is applying for entry clearance as a spouse under Appendix FM. Joanne will be accompanied by her visa national daughter from a previous marriage, Alice. Her sponsor is her British husband, Keith. He is living in the UK with his British son, Zach, from a previous marriage.

Joanne receives maintenance for both herself and her daughter from her ex-husband. Both of these maintenance payments will count for Category C purposes.

Keith receives maintenance for Zach from his ex-wife. As this maintenance is paid for the applicant's partner's child (Zach) rather than the applicant's partner himself (Keith), the maintenance payment will not count for Category C purposes.

These sources of income must be in the name of the applicant's partner, the applicant or both jointly.

The relevant asset such as shares, bonds, property, etc must be held by the applicant's partner, the applicant or both jointly at the date of application.

In what circumstances can rent received from a property count? The property, whether in the UK or overseas, must be owned by the applicant's partner, the applicant or both jointly, and must not be their main residence (therefore income from a lodger in that residence cannot be counted). If the applicant's partner or applicant shares ownership of the property with a third party, only income received from the applicant's partner's and/or applicant's share of the property can be counted. Income from property which is rented out for only part of the year,

eg a holiday let, can be counted. The equity in a property cannot be used to meet the financial requirement.

#### **EXAMPLE**

The applicant's partner, William, has been employed in the UK by the same employer for the last 12 months, earning £16,000 gross a year. He also receives £9,000 a year in rent from a house that he lets out. The house was left to him by his grandfather several years ago. It is in his sole name. The applicant has no dependent children.

William should meet the financial requirement of £18,600 under a combination of Category A income of £16,000 (subject to checking all his salary counts: see **8.3.6.4**) and Category C income of £9,000, so totalling £25,000.

#### **8.3.6.6 Further details about Category D**

To be counted, the applicant's partner, the applicant or both jointly must have cash savings of more than £16,000, held by the applicant's partner, the applicant or both jointly (but not with a third party) for at least six months at the date of application and under their control.

The savings may be held in any form of bank or savings account such as a current, deposit or investment account. However, the account must be provided by a financial institution regulated by the appropriate regulatory body for the country in which that institution is operating. Moreover, where appropriate, the financial institution must be on an approved list or not appear on a list of excluded institutions under Appendix P to the Immigration Rules. In all cases the account must allow the savings to be accessed immediately.

Only the amount of cash savings *above* £16,000 can be counted against any shortfall in the £18,600 income threshold (see **8.3.6.2**) or the relevant higher figure where at least one child of the applicant is included (see **8.3.6.2**). How is this done? At the entry clearance and limited leave to remain stages, the amount above £16,000 is divided by 2.5 (to reflect the 2.5 year or 30-month period before the applicant will have to make a further application). On an application for settlement, the whole of the amount above £16,000 can be used.

#### **EXAMPLE**

Zach and Yvonne are engaged to be married. Zach is a visa national. Yvonne is a British citizen. The couple are living in Zach's home country but they now wish to travel to the UK to get married and set up home together. Zach has no dependent children.

Zach applies for entry clearance under Appendix FM to the Immigration Rules as Yvonne's partner (fiancé). The couple have no income to count towards the financial requirement, but they do have £70,000 in cash savings which they have held in a joint account for at least the last six months. Will they qualify?

Under Category D, Zach and Yvonne's cash savings exceed £16,000 by £54,000. That figure divided by 2.5 is £21,600. As they require £18,600, they meet the financial requirement, provided they can produce the specified documents for these cash savings.

The level of savings required to meet any shortfall income must be based on the level of employment-related and/or other income at the date of application.

**Table 8.5** below sets out some examples of the minimum amount of savings required to meet a shortfall where £18,600 (applicant with no dependent children) is the prescribed minimum gross annual income.

**Table 8.5 Minimum amount of savings required to meet shortfall**

<b>Income</b>	<b>Entry clearance and leave to enter or remain: minimum amount of savings required</b>
No other relevant income	£62,500 (£16,000 + (shortfall of £18,600 x 2.5))
Other relevant income of £15,000	£25,000 (£16,000 + (shortfall of £3,600 x 2.5))
Other relevant income of £18,000	£17,500 (£16,000 + (shortfall of £600 x 2.5))

### 8.3.6.7 Further details about Categories F and G

What income from self-employment counts for the purposes of Categories F and G? Where the self-employed person is a sole trader, or is in a partnership or franchise agreement, the income taken into account is the gross taxable profits from that person's share of the business. Allowances or deductible expenses which are not taxed are not counted towards income. What if the self-employed person has set up his own registered company and is listed as a director of that company? The income that counts will then be any salary drawn from the post-tax profits of the company.

### 8.3.6.8 Exceptional circumstances and third party support

As we saw at 8.3.6.3, the applicant and his or her partner are limited as to the financial resources that count towards meeting the prescribed minimum gross income. But what if the minimum cannot be met and the applicant is not exempt (see 8.3.6.9 for the limited grounds for exemption)? If it is evident from the information provided by the applicant that there are exceptional circumstances which could render refusal a breach of Article 8 ECHR because that could result in unjustifiably harsh consequences for the applicant, his or her partner or a relevant child (see 8.14), the decision maker will consider whether the financial requirement is met through taking into account other sources of income, financial support and funds listed in para 21A(2) of Appendix FM-SE. These are:

- (a) a credible guarantee of sustainable financial support to the applicant or his or her partner from a third party;
- (b) credible prospective earnings from the sustainable employment or self-employment of the applicant or his or her partner; or
- (c) any other credible and reliable source of income or funds for the applicant or his or her partner, which is available to him or her at the date of application or which will become available to him or her during the period of limited leave applied for.

In determining the genuineness, credibility and reliability of these sources of income, financial support and funds, the decision maker will take into account such matters as follows.

- (a) In respect of a guarantee of sustainable financial support from a third party:
  - (i) whether the applicant has provided verifiable documentary evidence from the third party in question of their guarantee of financial support;
  - (ii) whether that evidence is signed, dated and witnessed or otherwise independently verified;
  - (iii) whether the third party has provided sufficient evidence of their general financial situation to enable the decision maker to assess the likelihood of the guaranteed financial support continuing for the period of limited leave applied for;

- (iv) whether the third party has provided verifiable documentary evidence of the nature, extent and duration of any current or previous financial support which they have provided to the applicant or his or her partner;
  - (v) the extent to which this source of financial support is relied upon by the applicant to meet the financial requirement; and
  - (vi) the likelihood of a change in the third party's financial situation or in their relationship with the applicant or the applicant's partner during the period of limited leave applied for.
- (b) In respect of prospective earnings from sustainable employment or self-employment of the applicant or his or her partner:
- (i) whether, at the date of application, a specific offer of employment has been made, or a clear basis for self-employment exists. In either case, such employment or self-employment must be expected to commence within three months of the applicant's arrival in the UK (if the applicant is applying for entry clearance) or within three months of the date of application (if the applicant is applying for leave to remain);
  - (ii) whether the applicant has provided verifiable documentary evidence of the offer of employment or the basis for self-employment, and, if so, whether that evidence:
    - (A) is on the headed notepaper of the company or other organisation offering the employment, or of a company or other organisation which has agreed to purchase the goods or services of the applicant or his or her partner as a self-employed person;
    - (B) is signed, dated and witnessed or otherwise independently verified;
    - (C) includes (in respect of an offer of employment) a signed or draft contract of employment;
    - (D) includes (in respect of self-employment) any of a signed or draft contract for the provision of goods or services; a signed or draft partnership or franchise agreement; an application to the appropriate authority for a licence to trade; or details of the agreed or proposed purchase or rental of business premises;
  - (iii) whether, in respect of an offer of employment in the UK, the applicant has provided verifiable documentary evidence:
    - (A) of a relevant employment advertisement and employment application;
    - (B) of the hours to be worked and the rate of gross pay, which that evidence must establish equals or exceeds the National Living Wage or the National Minimum Wage (as applicable, given the age of the person to be employed) and equals or exceeds the going rate for such work in that part of the UK; and
    - (C) which enables the decision maker to assess the reliability of the offer of employment, including in light of the total size of the workforce and the turnover (annual gross income or sales) of the relevant company or other organisation;
  - (iv) whether the applicant has provided verifiable documentary evidence that, at the date of application, the person to be employed or self-employed is in, or has recently been in, sustained employment or self-employment of the same or a similar type, of the same or a similar level of complexity and at the same or a similar level of responsibility;
  - (v) whether the applicant has provided verifiable documentary evidence that the person to be employed or self-employed has relevant professional, occupational or educational qualifications and that these are recognised in the UK;

- (vi) whether the applicant has provided verifiable documentary evidence that the person to be employed or self-employed has the level of English language skills such prospective employment or self-employment is likely to require;
- (vii) the extent to which this source of income is relied upon by the applicant to meet the financial requirement; and
- (viii) where an offer of employment is relied upon, and where the proposed employer is a family member or friend of the applicant or their partner, the likelihood of a relevant change in that relationship during the period of limited leave applied for.
- (c) In respect of any other credible and reliable source of income or funds for the applicant or his or her partner:
  - (i) whether the applicant has provided verifiable documentary evidence of the source;
  - (ii) whether that evidence is provided by a financial institution regulated by the appropriate regulatory body for the country in which that institution is operating, and is signed, dated and witnessed or otherwise independently verified;
  - (iii) where the income is or the funds are based on, or derived from, ownership of an asset, whether the applicant has provided verifiable documentary evidence of its current or previous ownership by the applicant, his or her partner or both;
  - (iv) whether the applicant has provided sufficient evidence to enable the decision maker to assess the likelihood of the source of income or funds being available to him or her during the period of limited leave applied for; and
  - (v) the extent to which this source of income or funds is relied upon by the applicant to meet the financial requirement.

Note that whilst any cash savings relied on by the applicant must at the date of application be in the name(s), and under the control, of the applicant, his or her partner or both, by concession those savings need not have been held for at least 6 months before the application was made.

An applicant granted leave under this provision will be on the 10-year route to settlement (see 8.1.2.3) but can subsequently apply to enter the five-year route if he or she then meets the relevant requirements.

#### **8.3.6.9 When applicant is exempt a maintenance test applies**

By para E-ECP.3.3(a), the applicant is exempt from the financial requirement if the applicant's partner is receiving one or more of the following UK welfare benefits:

- (a) disability living allowance or personal independence payment;
- (b) severe disablement allowance;
- (c) industrial injury disablement benefit;
- (d) attendance allowance;
- (e) carer's allowance;
- (f) Armed Forces Independence Payment or Guaranteed Income Payment under the Armed Forces Compensation Scheme;
- (g) Constant Attendance Allowance, Mobility Supplement or War Disablement Pension under the War Pensions Scheme; and
- (h) Police Injury Pension.

Paragraph 12 of Appendix FM-SE requires the applicant to produce official documentation from the DfWP confirming the entitlement to the relevant benefit or allowance and the amount received, as well as at least one personal bank statement showing payment of the benefit or allowance into the partner's account.

If the applicant is exempt from the financial requirement then, by para E-ECP.3.3(b), the applicant must provide evidence that his partner is able to maintain and accommodate himself, the applicant and any dependants adequately in the UK without recourse to public funds (see **8.3.6.10**). As to public funds, see **3.3.2**; and as to accommodation, see **8.3.7**.

#### **8.3.6.10 What is adequate maintenance?**

By para 6 of the Immigration Rules, ‘adequately’ in relation to this maintenance requirement means that, after income tax, National Insurance contributions and housing costs have been deducted, there must be available to the family the level of income that would be available to them if the family was in receipt of income support.

Home Office guidance to its decision makers is that the following five steps should be taken:

**Step 1** Establish the applicant’s partner’s (and/or the applicant’s if he is in the UK with permission to work and applying for leave to remain or settlement) current income. The gross income should be established and if the income varies, an average should be calculated.

Income from disability benefits can be included as income. Job offers or the prospects of employment are not taken into account.

Promises of third party support are not acceptable as Home Office guidance is that the applicant and his partner must have the required resources under their own control, not somebody else’s.

Evidence of employment might include wage slips, a letter from the employer (confirming the employment and annual salary) and bank statements showing where the salary has been paid in.

Evidence of income from benefits received by the applicant’s partner, such as disability benefits, may include the notice of award, but the best evidence will be the applicant’s partner’s bank statement showing where it has been paid into the account (see Ahmed (benefits: proof of receipt; evidence) Bangladesh [2013] UKUT 84 (IAC)).

**Step 2** Establish the applicant’s partner’s current housing costs from the evidence provided.

**Step 3** Deduct the housing costs from the net income.

**Step 4** Calculate how much the family would receive if they were on income support.

Note that the income support level in 2019/20 was £114.85 a week for a couple and £66.90 a week for a child.

**Step 5** The gross income after deduction of housing costs must equal or exceed the income support rate.

Note that if on making any future application for leave or settlement the applicant’s partner no longer receives an exempting welfare benefit, the financial requirement (**8.3.6.2**) will apply instead, unless para EX.1 then applies (see **8.5**).

#### **8.3.6.11 Specified documents**

Full details of the documents that must be produced in order to meet the financial requirement are set out in Appendix FM-SE to the Immigration Rules.

### **8.3.7 Accommodation requirements (para E-ECP.3.4)**

#### **8.3.7.1 Adequate accommodation**

By para E-ECP.3.4, the applicant must provide evidence that there will be adequate accommodation, without recourse to public funds, for the family, including other family members who are not included in the application but who live in the same household, which the family own or occupy exclusively (see **8.3.7.2**).

Accommodation is not regarded as adequate if it is, or will be, overcrowded (or it contravenes public health regulations) (see 8.3.7.3).

### 8.3.7.2 Owned or occupied exclusively

The couple will have to provide documentary evidence where the property is either owned or rented by them. This may be in the form of a letter from their mortgagee, if the property was bought with the aid of a mortgage, a copy of the property deeds and, in the case of rented accommodation, a rent book and tenancy agreement.

Where the accommodation is rented from a local authority or housing association, correspondence from the landlord is normally regarded as genuine and sufficient by the Home Office.

Can a third party provide accommodation for the couple? Yes, provided it is a firm arrangement. In AB (*Third-party provision of accommodation*) [2008] UKAIT 00018, the sponsor wife was living in premises provided by a relative. She contributed to the household bills but did not pay any rent. The relative was happy for this arrangement to continue if she was joined by her husband. The Tribunal indicated that the mere mention of a relative or friend who was prepared to accommodate the parties was probably not enough, but a real and stable arrangement for accommodation provided by another might be. In this case the offer of accommodation was a real and stable one. It was credible and practical, and satisfied the requirement. In these circumstances it obviously helps if the third party supplies a statement setting out the accommodation arrangements.

If the accommodation is not owned but shared, para 6 of the Immigration Rules provides that 'occupy exclusively' in relation to accommodation means that part of the property must be for the exclusive use of the family. But what does this mean in practice? In KJ ('Own or occupy exclusively') Jamaica [2008] UKAIT 00006, the Tribunal observed that

it is clear that it cannot mean either 'alone' nor 'with a legal right to exclude all others' ... it ought not to be enough for an applicant to say that he will be accommodated by a series of friends allowing him to sleep on sofas, or that he has enough money to put up his dependants in hotels from time to time, or that he or they will find space in hostels. What appears to be required is that there is somewhere that the person or people in question can properly, albeit without any legal accuracy, describe as their own home. They may not own it; and they may share it; but it is adequate for them, it is in a defined place, and it is properly regarded as where they live, with the implications of stability that that phrase implies. (per Mr CMG Ockelton, Deputy President, at para 9)

Home Office guidance is that where accommodation is shared, a decision maker should expect to see evidence that the family unit of the applicant, the applicant's partner and any dependants will have exclusive use of at least the number of bedrooms required for the age and gender of the members of that family unit (see 8.3.7.3).

### 8.3.7.3 Overcrowding

The Housing Act 1985 (HA 1985), s 324 contains two tests to determine whether or not accommodation is overcrowded. If by coming to live in the property the applicant will cause it to be overcrowded under either test, the application will fail. The relevant law is as follows:

#### 324 Definition of overcrowding

A dwelling is overcrowded for the purposes of this Part when the number of persons sleeping in the dwelling is such as to contravene—

- (a) the standard specified in section 325 (the room standard), or
- (b) the standard specified in section 326 (the space standard).

#### 325 The room standard

- (1) The room standard is contravened when the number of persons sleeping in a dwelling and the number of rooms available as sleeping accommodation is such that two persons of opposite sexes who are not living together as husband and wife must sleep in the same room.

(2) For this purpose—

- (a) children under the age of ten shall be left out of account, and
- (b) a room is available as sleeping accommodation if it is of a type normally used in the locality either as a bedroom or as a living room.

### 326 The space standard

(1) The space standard is contravened when the number of persons sleeping in a dwelling is in excess of the permitted number, having regard to the number and floor area of the rooms of the dwelling available as sleeping accommodation.

(2) For this purpose—

- (a) no account shall be taken of a child under the age of one and a child aged one or over but under ten shall be reckoned as one-half of a unit, and
- (b) a room is available as sleeping accommodation if it is of a type normally used in the locality either as a living room or as a bedroom.

(3) The permitted number of persons in relation to a dwelling is the number specified in the following Table but no account shall be taken for the purposes of the Table of a room having a floor area of less than 50 square feet.

**Table**

<u>Number of rooms</u>	<u>Number of persons</u>
1	2
2	3
3	5
4	7.5
5	10
6 or more	2 persons for each room

As you will have noted, the first test is called 'the room standard'. It means that a property is overcrowded if two people aged 10 or more of the opposite sex, other than the applicant and the applicant's partner, have to sleep in the same room. The second test is 'the space standard'. Basically, this determines whether or not the number of people sleeping in the property exceeds that permitted by the Act. The table sets out the limits. The applicant can meet the accommodation requirement only if both tests are satisfied.

#### **EXAMPLE**

Ian lives in a house with three rooms that can be used for sleeping. Living with him is his son, Lionel, aged 12, and his daughter, Diane, aged 13. Ian's mother, Mary, also lives with them. Ian recently travelled to Moscow and married Vika, a Russian national. Will the house be overcrowded if she is allowed to join Ian in the UK?

First, apply the room standard and answer the question: who can sleep in each room?

By HA 1985, s 325(1), Ian and Vika, as husband and wife, can share one room.

In light of HA 1985, s 325(1) and (2)(a), Lionel, aged 12, and Diane, aged 13, as two persons of 10 years old or more of the opposite sex, cannot share. So they must be in separate rooms. The house will not be overcrowded, therefore, if Diane shares with Mary (two persons of 10 years old or more but of the same sex) and Lionel has a room of his own.

Secondly, apply the space standard and answer the question: will the permitted number of persons for this property be exceeded?

Here, with three rooms available to sleep in, the limit under HA 1985, s 326(3) is five persons, and that will not be exceeded as there will be only five people in the household if Vika joins them, namely, Ian (an adult counts as one), Vika (an adult counts as one), Lionel (aged 12, so 10 years old or more and counts as one), Diane (aged 12, so 10 years old or more and counts as one) and Mary (an adult counts as one).

A check should be made that each of the three rooms has a floor area of at least 50 square feet for the purposes of HA 1985, s 326(3).

### 8.3.8 English language requirement (para E-ECP.4.1)

#### 8.3.8.1 Meeting the requirement

By para E-ECP.4.1, the applicant will meet the English language requirement if he provides specified evidence that he:

- (a) is a national of a Home Office-designated majority English-speaking country (see 7.3.4.2);
- (b) has an academic qualification recognised by NARIC UK to be equivalent to the standard of a Bachelor's or Master's degree or PhD in the UK, which was taught in English (see 7.3.4.3);
- (c) has passed an English language test in speaking and listening at a minimum of level A1 of the Common European Framework of Reference for Languages with a secure provider approved by the Home Office (SELT: see 7.3.4.1). A list of Home Office-approved tests can be found on the Home Office website (see 1.2.8); or
- (d) is exempt from the English language requirement (see 8.3.8.2).

The requirement does not breach Article 8 ECHR: see *R (on the application of Bibi) v Secretary of State for the Home Department* [2013] EWCA Civ 322.

#### 8.3.8.2 Exempt from English language requirement

By para E-ECP.4.2, the applicant is exempt from the requirement to provide a suitable English language test certificate if at the date of the application he is aged 65 or over, or has a disability (physical or mental condition) which prevents him from meeting the requirement, or if there are exceptional compassionate circumstances which prevent him from meeting the requirement prior to entering the UK.

Home Office guidance is that exemption applies only where someone has a physical or mental impairment which prevents him from learning English and/or taking a test. This is not a blanket exemption, as some disabled people are capable of learning English and taking an English test. So the exemption is granted only on production of satisfactory medical evidence from a medical practitioner who is qualified in the appropriate field, which specifies the disability and from which it may be concluded that exemption is justified.

What exceptional compassionate circumstances might lead to exemption? Home Office guidance is that the applicant must demonstrate that as a result of his circumstances he is unable to access facilities for learning English before coming to the UK. Evidence of an inability to attend, prior or previous attendance, or attempts to access learning must be clearly provided. This evidence must be provided by an independent source, eg from an appropriately qualified medical practitioner, or alternatively must be independently verified by a decision maker.

Home Office guidance is that situations which might, subject to receipt of all necessary evidence in support, lead a decision maker to conclude that the applicant can properly claim exceptional compassionate circumstances, include the following:

- (a) if the applicant's partner in the UK is seriously ill and requires immediate support or care from the applicant whilst receiving medical attention in the UK, and there is insufficient time for the applicant to access learning and/or to take a test; and
- (b) where a country or region is affected by conflict or humanitarian disaster, the Home Office will consider whether the situation makes it unreasonable for individuals to learn English and/or to take a test. In such circumstances a decision maker will consider the nature of the situation, including the infrastructure affected, and whether it would be proportionate to expect an applicant to meet the English language requirement.

It will be extremely rare for exceptional circumstances to apply when the applicant is applying in the UK for leave to remain, as applicants already here will have access to a wide variety of facilities for learning English.

Financial reasons, or claims of illiteracy or limited education are not acceptable to the Home Office.

Note that if an applicant has been granted an exemption due to exceptional compassionate circumstances at entry clearance, he will be required to meet the English language requirement when he applies for further leave to remain after 30 months.

### **8.3.9 Decision on application**

~~By para D-ECP.1.1, only an applicant who meets the requirements for entry clearance as a partner will be granted entry clearance. This will be for an initial period not exceeding 33 months and subject to a condition of no recourse to public funds. However, if the applicant is a fiancé(e) or proposed civil partner, the applicant will be granted entry clearance for a period not exceeding six months and subject to a condition of no recourse to public funds and a prohibition on employment.~~

~~By para D-ECP.1.2, where the applicant does not meet the requirements for entry clearance as a partner the application will be refused.~~

## **8.4 LEAVE TO REMAIN IN THE UK AS A PARTNER**

### **8.4.1 Who can apply?**

There are six different situations to be considered here, namely:

- (a) where a person entered the UK as a partner under Appendix FM and now seeks an extension of his limited leave for a further 30 months;
- (b) where a person entered the UK as a fiancé(e) or proposed civil partner under Appendix FM and now, following marriage or civil partnership, applies to switch to the category of a partner under Appendix FM;
- (c) where a person is in the UK in a different immigration category has married or entered into a civil partnership and now wishes to switch to the category of a partner under Appendix FM;
- (d) where a person switched in the UK to the category of a partner under Appendix FM and now applies for an extension of his limited leave for a further 30 months;
- (e) where a person wishes to start on the 10-year family route to settlement under Appendix FM (see **8.1.2.3**) by relying on his Article 8 ECHR rights under para EX.1 (see **8.5**). This application might be made, for example, by an overstayer who has married a British citizen or a person settled in the UK, and who otherwise faces administrative removal from the UK (see **10.4**);
- (f) where a person is on the 10-year family route to settlement under Appendix FM and now seeks an extension of his limited leave for a further 30 months.

#### 8.4.2 An overview of the requirements

The requirements in Appendix FM to be met for leave to remain as a partner (see para R-LTRP.1.1) are that:

- (a) the applicant and his 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; and either
- (c) (i) the applicant must not fall for refusal under Section S-LTR: Suitability – leave to remain, and
  - (ii) the applicant meets all of the requirements of Section E-LTRP: Eligibility for limited leave to remain as a partner;
 or
- (d) (i) the applicant must not fall for refusal under Section S-LTR: Suitability – leave to remain, and
  - (ii) the applicant meets the eligibility requirements of paras E-LTRP.1.2–1.12 and E-LTRP.2.1, and
  - (iii) para EX.1 applies.

The suitability requirements are detailed at 8.4.3, the eligibility requirements at 8.4.4 and para EX.1 at 8.5.

#### 8.4.3 Suitability requirements

Paragraphs S-LTR.1.2–1.8 and S-LTR.2.2, 2.4 and 2.5 set out respectively the mandatory and discretionary grounds on which the Home Office will normally refuse an application. You will see that broadly these are the same as for entry clearance (see 8.3.3).

- S-LTR.1.2 The applicant is at the date of application the subject of a deportation order.
- S-LTR.1.3 The presence of the applicant in the UK is not conducive to the public good because he has been convicted of an offence for which he has been sentenced to imprisonment for at least four years.
- S-LTR.1.4 The presence of the applicant in the UK is not conducive to the public good because he has been convicted of an offence for which he has been sentenced to imprisonment for less than four years but at least 12 months.
- S-LTR.1.5 The presence of the applicant in the UK is not conducive to the public good because, in the view of the Secretary of State, his offending has caused serious harm or he is a persistent offender who shows a particular disregard for the law.
- S-LTR.1.6 The presence of the applicant in the UK is not conducive to the public good because his conduct (including convictions which do not fall within paras S-LTR.1.3–1.5), character, associations, or other reasons, make it undesirable to allow him to remain in the UK.
- S-LTR.1.7 The applicant has failed without reasonable excuse to comply with a requirement to attend an interview; provide information; provide physical data; or undergo a medical examination or provide a medical report.
- S-LTR.1.8 The presence of the applicant in the UK is not conducive to the public good because the Secretary of State (a) has made a decision under Article 1F of the Refugee Convention to exclude the person from the Refugee Convention or under para 339D of these Rules to exclude them from humanitarian protection; or (b) has previously made a decision that they are a person to whom Article 33(2) of the Refugee Convention applies because there are reasonable grounds for regarding them as a danger to the security of the UK.
- S-LTR.2.2 Whether or not to the applicant's knowledge: (a) false information, representations or documents have been submitted in relation to the application

(including false information submitted to any person to obtain a document used in support of the application); or (b) there has been a failure to disclose material facts in relation to the application.

- S-LTR.2.4 A maintenance and accommodation undertaking has been requested under para 35 of the Rules and has not been provided.
- S-LTR.2.5 The Secretary of State has given notice to the applicant and their partner under section 50(7)(b) of the Immigration Act 2014 that one or both of them have not complied with the investigation of their proposed marriage or civil partnership.

Note that when the Secretary of State is considering whether the presence of the applicant in the UK is not conducive to the public good (see S-LTR.1.3–1.8 above), any legal or practical reasons why the applicant cannot presently be removed from the UK must be ignored.

In addition, para S-LTR.4.1 provides that the applicant may be refused on grounds of suitability if any of the following apply.

- S-LTR.4.2 The applicant has made false representations or failed to disclose any material fact for the purpose of obtaining a previous variation of leave, or in order to obtain a document from the Secretary of State or a third party, required in support of a previous variation of leave.
- S-LTR.4.3 The applicant has previously made false representations or failed to disclose material facts for the purpose of obtaining a document from the Secretary of State that indicates that he or she has a right to reside in the United Kingdom.
- S-LTR.4.4 The applicant has failed to pay litigation costs awarded to the Home Office.
- S-LTR.4.5 One or more relevant NHS bodies has notified the Secretary of State that the applicant has failed to pay charges in accordance with the relevant NHS regulations on charges to overseas visitors and the outstanding charges have a total value of at least £500.

#### **8.4.4 Overview of eligibility requirements**

If an applicant meets all of the eligibility requirements in paras E-LTRP.1.2–4.2, he may be granted limited leave to remain and proceed on the five-year family route to settlement. Alternatively, if the applicant can meet the eligibility requirements of paras E-LTRP.1.2–1.12 and E-LTRP.2.1, and also meets para EX.1 (see 8.5 below), he may be granted limited leave to remain and proceed on the 10-year family route to settlement.

The eligibility requirements are as follows:

- (a) relationship requirements (see 8.4.5);
- (b) immigration requirements (see 8.4.6);
- (c) financial requirements (see 8.4.7);
- (d) accommodation requirements (see 8.4.8); and
- (e) English language requirement (see 8.4.9).

#### **8.4.5 Relationship requirements**

Paras E-LTRP.1.2–1.10 set out the same relationship requirements as for entry clearance (see 8.3.5). Note that para E-LTRP.1.10 provides, in addition, that the applicant must produce evidence that, since entry clearance as a partner was granted or since the last grant of limited leave to remain as a partner, the applicant and his partner have lived together in the UK, or there is good reason, consistent with a continuing intention to live together permanently in the UK, for any period in which they have not done so.

Note that para E-LTRP.1.11 provides that if the applicant is in the UK with leave as a fiancé(e) or proposed civil partner and the marriage or civil partnership did not take place during that period of leave, there must be good reason why it did not, and evidence must be produced that

#### 8.4.10 Decision on application

If the applicant meets all the requirements he will be granted limited leave to remain for a period not exceeding 30 months and subject to a condition of no recourse to public funds. The applicant will be eligible to apply for settlement after a continuous period of at least 60 months (five years) with such leave (see 8.6). This includes any period spent in the UK with entry clearance as a partner under para D-ECP1.1, but does not include any period of entry clearance or limited leave as a fiancé(e) or proposed civil partner.

A fiancé(e) or proposed civil partner will be able to work only once he has received notification from the Home Office that his application for leave to remain has been granted.

If the applicant can meet the suitability requirements, the eligibility requirements of paras E-LTRP.1.2–1.12 (the relationship requirements at 8.4.5) and E-LTRP.2.1 (the first immigration requirement at 8.4.6), and para EX.1 (see 8.5) applies, he will be granted leave to remain for a period not exceeding 30 months. This will be subject to a condition of no recourse to public funds (unless there are exceptional circumstances set out in the application which require access to public funds to be granted on grounds of destitution). He will be eligible to apply for settlement after a continuous period of at least 120 months (10 years) with such leave (see 8.6). This includes any period spent in the UK with entry clearance as a partner under para D-ECP1.1, but does not include any period of entry clearance or limited leave as a fiancé(e) or proposed civil partner.

### 8.5 PARAGRAPH EX.1

If the applicant can meet the suitability requirements (8.4.3) and the eligibility requirements of paras E-LTRP.1.2-1.12 (the relationship requirements at 8.4.5) and E-LTRP.2.1 (the first immigration requirement at 8.4.6), the application will be granted if para EX.1 applies. Broadly, this allows an applicant to remain in the UK on the basis of his family life with a child and/or a partner if it would breach Article 8 ECHR to remove the applicant. In these circumstances the applicant will have a longer route to settlement, namely 10 years, granted in four periods of 30 months' limited leave, with a fifth application for indefinite leave to remain.

Note that if the applicant is being deported having committed a criminal offence or criminal offences in the UK, and so does not meet the suitability requirements at 8.4.3, then different considerations will apply instead of para EX.1: see 10.3.4.

Further note that if the applicant is liable to being removed from the UK, perhaps as an overstayer, he may still meet the suitability requirements at 8.4.3, and para EX.1 will then apply: see 10.4.6.

#### 8.5.1 Family life in UK with a child

Paragraph EX.1 applies if the applicant has a genuine and subsisting parental relationship with a child (under the age of 18 years) who is in the UK, who is a British citizen or who has lived in the UK continuously for at least the seven years immediately preceding the date of application, and, taking into account the child's best interests as a primary consideration, it would not be reasonable to expect that child to leave the UK.

##### 8.5.1.1 Genuine and subsisting parental relationship

Home Office guidance to its decision makers is that when considering whether the relationship is genuine and subsisting, the following questions are likely to be relevant:

- (a) Does the applicant have a parental relationship with the child? What is the relationship – biological, adopted, step-child, legal guardian? Is the applicant the child's *de facto* primary carer?

- (b) 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?
- (c) Is there any evidence or other relevant information provided within the application, eg the views of the child or other family members, or from 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:

- (a) that there is little or no contact with the child, or contact is irregular;
- (b) any contact is only recent in nature;
- (c) support is only financial in nature, there is no contact or emotional or welfare support;
- (d) the child is largely independent of the person.

The 'parent' must have a 'subsisting' role in personally providing at least some element of direct parental care to the child. The focus of this exception is upon the loss, by deportation, of a parent who is providing, or is able to provide, 'care for the child' (see *Secretary of State for the Home Department v VC (Sri Lanka)* [2017] EWCA Civ 1967).

#### **8.5.1.2 Qualifying child is a British citizen or been in the UK for a continuous period of seven years**

Home Office guidance is that its decision makers should establish the age and nationality of each child affected by the decision, and where they are foreign nationals their immigration history in the UK, eg how long they have lived in the UK and where they lived before.

In establishing whether a non-British citizen child has been in the UK continuously for more than seven years, the time spent in the UK with and without valid leave can be included. Short periods outside the UK, for example for holidays or family visits, would not count as a break in the seven years required. However, where a child has spent more than six months out of the UK at any one time, this normally should count as a break in continuous residence unless any exceptional factors apply.

#### **8.5.1.3 It would be unreasonable to expect the child to leave the UK**

Home Office guidance is that the starting point is that it would not normally expect a qualifying child to leave the UK. Why? Because it accepts that it is normally in a child's best interest for the whole family to remain together, which means that if the child is not expected to leave, then the parent or parents or primary carer of the child will also not be expected to leave the UK. Consideration of whether or not it is reasonable to expect a qualifying child to leave the UK must be given regardless of whether the child is actually expected to leave the UK (*Secretary of State for the Home Department v AB (Jamaica)* [2019] EWCA Civ 661). The provision calls for a fact-finding exercise so that the full background facts must be established against which the question can then be addressed. Once all the relevant facts have been found, the only question which arises is whether or not it would be reasonable to expect the child to leave the UK. The focus has to be on the child (see *Runa v Secretary of State for the Home Department* [2020] EWCA Civ 514).

If one parent has no right to remain, but the other parent does, that is the background against which the assessment is conducted. If neither parent has the right to remain, then that is the background against which the assessment is conducted. Thus, the ultimate question will be: is it reasonable to expect the child to follow the parent with no right to remain to the country of origin? (See *KO (Nigeria) v Secretary of State for the Home Department* [2018] UKSC 53.)

Home Office guidance is that it may be reasonable for a qualifying child to leave the UK with the parent or primary carer where, for example:

- the parent or parents, or child, are a citizen of the country and so able to enjoy the full rights of being a citizen in that country;
- there is nothing in any country specific information, including as contained in relevant country information, which suggests that relocation would be unreasonable;
- the parent or parents or child have existing family, social, or cultural ties with the country, and if there are wider family or relationships with friends or community overseas that can provide support:
  - 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 their life and how a transition to similar support overseas would affect them;
  - a person who has extended family or a network of friends in the country should be able to rely on them for support to help (re)integrate there;
  - a parent or parents or a child who have lived in or visited the country before for periods of more than a few weeks should be better able to adapt, or the parent or parents would be able to support the child in adapting, to life in the country;
  - the decision maker must consider any evidence of exposure to, and the level of understanding of, the cultural norms of the country. For example, a period of time spent living amongst a diaspora from the country may give a child an awareness of the culture of the country;
  - the parents or child can speak, read and write in a language of that country, or are likely to achieve this within a reasonable time period. Fluency is not required – an ability to communicate competently with sympathetic interlocutors would normally suffice;
- removal would not give rise to a significant risk to the child's health; and
- there are no other specific factors raised by or on behalf of the child.

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

#### 8.5.1.4 Exceptional factors

If para EX.1 does not apply the application is normally be refused. However, the Home Office accepts that there may be exceptional factors which would make refusal unreasonable. Its decision makers should consider any other exceptional factors raised in relation to the child's best interests and question whether refusal is still appropriate in light of those factors. 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 return.

Home Office guidance is that 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 exceptions to para EX.1 have been missed by a small margin. Rather, the Immigration Rules establish the thresholds as determining when leave would be appropriate bar other factors. However, in assessing exceptionality the matters identified in para EX.1 need to be considered along with all other aspects of the case. The decision maker then needs to determine whether removal would have such severe consequences for the child that exceptionally refusal or return is not appropriate. Finally, the decision maker should be prepared to take into account any order made by the UK Family Court, but that is not determinative of the immigration decision. However, the judgment of the family court, with all the tools at its disposal (including the assistance of the Children and Family Court Advisory and Support Service (CAFCASS) and the opportunity to assess all the adults), could and

should inform the decision maker: see *Mohan v Secretary of State for the Home Department* [2012] EWCA Civ 1363.

### 8.5.2 Family life in UK with a partner

Paragraph EX.1 additionally, or alternatively, applies if the applicant has a genuine and subsisting relationship (see 8.3.5.5) with a partner who is in the UK and who 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.

#### 8.5.2.1 Insurmountable obstacles

In determining whether there are ‘insurmountable obstacles’, para EX.2 provides that the decision maker should consider if there are very significant difficulties that would be faced by the applicant or his 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 his partner.

Home Office guidance emphasises that 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 him overseas. For example, a British citizen partner who has lived in the UK all of his or her 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 him or her to do so, but a significant degree of hardship or inconvenience does not amount to an insurmountable obstacle.

Sales LJ held, in *R (on the application of Agyarko) v Secretary of State for the Home Department* [2015] EWCA Civ 440:

21. The phrase ‘insurmountable obstacles’ as used in this paragraph of the Rules clearly imposes a high hurdle to be overcome by an applicant for leave to remain under the Rules. The test is significantly more demanding than a mere test of whether it would be reasonable to expect a couple to continue their family life outside the United Kingdom.

22. This interpretation is in line with the relevant Strasbourg jurisprudence. The phrase ‘insurmountable obstacles’ has its origin in the Strasbourg jurisprudence in relation to immigration cases in a family context, where it is mentioned as one factor among others to be taken into account in determining whether any right under Article 8 exists for family members to be granted leave to remain or leave to enter a Contracting State: see eg *Rodrigues da Silva and Hoogkamer v Netherlands* (2007) 44 EHRR 34, para [39] (“... whether there are insurmountable obstacles in the way of the family living together in the country of origin of one or more of them ...”). The phrase as used in the Rules is intended to have the same meaning as in the Strasbourg jurisprudence. It is clear that the ECtHR regards it as a formulation imposing a stringent test in respect of that factor, as is illustrated by *Jeunesse v Netherlands* [(2015) 60 EHRR 17] (see para [117]: there were no insurmountable obstacles to the family settling in Suriname, even though the applicant and her family would experience hardship if forced to do so).

The Court of Appeal decision in Agyarko was upheld by the Supreme Court ([2017] UKSC 11), which confirmed that the test is compatible with Article 8.

The Home Office states that Article 8 of the ECHR does not oblige the UK to accept the choice of a couple as to which country they would prefer to reside in.

Home Office guidance is that the 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. Why? Because 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.

Does being separated from extended family members, such as might happen where the partner’s parents and/or siblings live here, amount to an insurmountable obstacle? Would a

material change in the quality of life for the applicant and his partner in the country of return, such as the type of accommodation they would live in, or a reduction in their income, amount to an insurmountable obstacle? No, answers the Home Office, not unless there were particular exceptional factors in either case.

According to the Home Office, the factors which might be relevant to the consideration of whether an insurmountable obstacle exists include, but are not limited to, the following:

- (a) The ability of the family to lawfully enter and stay in another country.
- (b) Cultural barriers where the partner would be so disadvantaged that he or she could not be expected to go and live in that country, for example, a same sex couple where the UK partner would face substantial societal discrimination, or where the rights and freedoms of the UK partner would be severely restricted.
- (c) 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 his or her 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.
- (d) In some circumstances, there may be particular risks to foreign nationals which extend to the whole of the country of return.

It is vital that an applicant produces evidence in support of the claim. For example, in *R (Mudibo) v Secretary of State for the Home Department* [2017] EWCA Civ 1949, the obstacles to family life, which were said to be insurmountable, were the applicant's [Mr Ali's] inability to work, his inability to support himself in his home country of Tanzania and the difference in standards of medical care for his condition in the UK and in Tanzania:

It seems to me that the evidence on all these points was tenuous in the extreme. There was no evidence given by Mr Ali at all: he did not explain what work he had been accustomed to, what his skills were and what the real obstacles to employment were for him. There was no evidence from any quarter as to what obstacles there were to support for the couple in Tanzania and no explanation as to what the appellant's own employment prospects were. The medical evidence was brief and relatively old and nothing was provided to establish a case of lack of necessary medication and/or medical care in Tanzania ... the claim to 'insurmountable obstacles' amounted in reality to mere assertion. (per McCombe LJ at [31])

#### 8.5.2.2 Exceptional circumstances

Where the applicant does not meet the requirements set out above, refusal of the application will be appropriate. However, leave may be granted outside the Rules where exceptional circumstances apply.

The Home Office decision maker needs to determine whether refusal or removal would have such severe consequences for the individual that this would not be proportionate given the nature of his family life, notwithstanding the fact that there are no insurmountable obstacles to family life with the applicant's partner continuing outside the UK. Home Office guidance is that is likely to be the case only very rarely.

In determining whether there are exceptional circumstances, the decision maker must consider all relevant factors, such as the following:

- (a) The circumstances around the applicant's entry to the UK and the proportion of the time he has been in the UK legally as opposed to illegally. Did he form his relationship with his partner at a time when he had no immigration status or this was precarious? Family life which involves the applicant putting down roots in the UK in the full knowledge that his stay here is unlawful or precarious should be given less weight, when balanced against the factors weighing in favour of removal, than family life formed by a person lawfully present in the UK.

- (b) Cumulative factors should be considered. For example, where the applicant has family members in the UK but his family life does not provide a basis for staying and he has 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.
- (c) The public policy considerations in s 117A of the NIAA 2002 (see 10.3.4.2).

If the application is granted because exceptional circumstances apply, leave outside the Immigration Rules for a period of 30 months is usually given.

## 8.6 INDEFINITE LEAVE TO REMAIN (SETTLEMENT) AS A PARTNER

### 8.6.1 Who can apply?

There are two different situations to be considered here, namely:

- (a) where a person has completed the five-year family route to settlement, ie two periods of 30 months' leave in the UK as a partner; and
- (b) where a person has completed the 10-year family route to settlement, ie four periods of 30 months' leave in the UK as a partner.

### 8.6.2 An overview of the requirements

The requirements in Appendix FM to be met for indefinite leave to remain as a partner (see para R-ILRP.1.1) are that:

- (a) the applicant and his partner must be in the UK;
- (b) the applicant must have made a valid application for indefinite leave to remain as a partner;
- (c) the applicant must not fall for refusal under any of the grounds in Section S-ILR: Suitability for indefinite leave to remain (see 8.6.3);
- (d) the applicant must meet all of the requirements of Section E-LTRP: Eligibility for leave to remain as a partner (see 8.4.4); and
- (e) the applicant must meet all of the requirements of Section E-ILRP: Eligibility for indefinite leave to remain as a partner (see 8.6.4).

### 8.6.3 Suitability requirements for indefinite leave to remain

Paragraph S-ILR.1.1 provides that the application will be refused if any of the following apply:

- S-ILR.1.2 The applicant is currently the subject of a deportation order.
- S-ILR.1.3 The presence of the applicant in the UK is not conducive to the public good because they have been convicted of an offence for which they have been sentenced to imprisonment for at least four years.
- S-ILR.1.4 The presence of the applicant in the UK is not conducive to the public good because they have been convicted of an offence for which they have been sentenced to imprisonment for less than four years but at least 12 months, unless a period of 15 years has passed since the end of the sentence.
- S-ILR.1.5 The presence of the applicant in the UK is not conducive to the public good because they have been convicted of an offence for which they have been sentenced to imprisonment for less than 12 months, unless a period of seven years has passed since the end of the sentence.
- S-ILR.1.6 The applicant has, within the 24 months prior to the date on which the application is decided, been convicted of or admitted an offence for which they received a non-custodial sentence or other out of court disposal that is recorded on their criminal record.

- S-ILR.1.7 The presence of the applicant in the UK is not conducive to the public good because, in the view of the Secretary of State, their offending has caused serious harm or they are a persistent offender who shows a particular disregard for the law.
- S-ILR.1.8 The presence of the applicant in the UK is not conducive to the public good because their conduct (including convictions which do not fall within paragraphs S-ILR.1.3. to S-ILR.1.6.), character, associations, or other reasons, make it undesirable to allow them to remain in the UK.
- S-ILR.1.9 The applicant has failed without reasonable excuse to comply with a requirement to:
- attend an interview;
  - provide information;
  - provide physical data; or
  - undergo a medical examination or provide a medical report.

Paragraph S-ILR.2.1 provides that the application will normally be refused if any of the following apply:

- S-ILR.2.2 Whether or not to the applicant's knowledge:
- false information, representations or documents have been submitted in relation to the application (including false information submitted to any person to obtain a document used in support of the application); or
  - there has been a failure to disclose material facts in relation to the application.
- S-ILR.2.4 A maintenance and accommodation undertaking has been requested under paragraph 35 of these Rules and has not been provided.

When considering whether the presence of the applicant in the UK is not conducive to the public good, are any legal or practical reasons why the applicant cannot presently be removed from the UK ignored? Yes, see para S-ILR.3.1.

Finally, para S-ILR.4.1 provides that the application may be refused if any of the following apply.

- S-ILR.4.2 The applicant has made false representations or failed to disclose any material fact for the purpose of obtaining a previous variation of leave, or in order to obtain a document from the Secretary of State or a third party, required in support of a previous variation of leave.
- S-ILR.4.3 The applicant has previously made false representations or failed to disclose material facts for the purpose of obtaining a document from the Secretary of State that indicates that he or she has a right to reside in the United Kingdom.
- S-ILR.4.4 The applicant has failed to pay litigation costs awarded to the Home Office.
- S-ILR.4.5 One or more relevant NHS bodies has notified the Secretary of State that the applicant has failed to pay charges in accordance with the relevant NHS regulations on charges to overseas visitors and the outstanding charges have a total value of at least £500.

#### **8.6.4 Eligibility requirements for indefinite leave to remain**

Note that whilst the applicant must meet all of the requirements of Section E-LTRP: Eligibility for leave to remain as a partner (see 8.4.4), where the financial requirement applies, any cash savings in Category D that exceed £16,000 are taken into account in full.

**Table 8.6** below sets out some examples of the minimum savings required to meet a shortfall where £18,600 (applicant with no dependent children) is the prescribed minimum gross annual income.

**Table 8.6 Minimum savings required to meet a shortfall**

<b>Income</b>	<b>Indefinite leave to remain: minimum savings required</b>
No other relevant income	£34,600 (£16,000 + shortfall of £18,600)
Other relevant income of £15,000	£19,600 (£16,000 + shortfall of £3,600)
Other relevant income of £18,000	£16,600 (£16,000 + and shortfall of £600)

By para E-ILRP.1.2, the applicant must be in the UK with valid leave to remain as a partner (disregarding any period of overstaying for a period of 28 days or less).

By para E-ILRP.1.3, the applicant must have completed a continuous period of at least 60 months with limited leave as a partner (under para R-LTRP.1.1(a) to (c), or in the UK with entry clearance as a partner under para D-ECP.1.1), or a continuous period of at least 120 months with limited leave as a partner (under para R-LTR.P.1.1(a), (b) and (d), or in the UK with entry clearance as a partner under para D-ECP.1.1) or a continuous period of at least 120 months with limited leave as a partner under a combination of these paragraphs. Note that any period of entry clearance or limited leave as a fiancé(e) or proposed civil partner cannot be included.

By para E-ILRP.1.4, only those periods of limited leave when the applicant's partner is the same person can be taken into account.

By para E-ILRP.1.6, the applicant must have sufficient knowledge of the English language and sufficient knowledge about life in the UK (see **3.8.7** and **8.6.5**).

### **8.6.5 Absences from the UK**

There is no requirement that the entire five- or 10-year leave periods, as appropriate, must be spent in the UK. Home Office guidance is that where an applicant has spent a limited period outside of the UK in connection with his or his partner's employment, this should not count against him. However, if he has spent the majority of the period overseas, there may be reason to doubt that all the requirements of the Immigration Rules have been met, eg that the couple intend to live together permanently in the UK (see **8.3.5.9**). The Home Office states that each case must be judged on its merits, taking into account reasons for travel, length of absence, and whether the applicant and his partner travelled and lived together during the time spent outside the UK. These factors will need to be considered against the relevant requirements of the Immigration Rules.

### **8.6.6 Decision on the application**

By para D-ILRP.1.1, if the applicant meets all of the requirements at **8.6.2** he will be granted indefinite leave to remain unless para EX.1 applies (see **8.5**). Where paragraph EX.1 applies, the applicant will be granted further limited leave to remain as a partner for a period not exceeding 30 months under para D-ILRP.1.2 (see immediately below).

What if the applicant cannot meet all the requirements? Paragraph D-ILRP.1.2 has a limited concession. It provides that if the applicant does not meet the requirements for indefinite leave to remain as a partner only for one or both of the following reasons:

- (a) para S-ILR.1.5 or 1.6 applies; and/or
- (b) the applicant does not have sufficient knowledge of the English language and sufficient knowledge about life in the UK;

then the applicant will be granted further limited leave to remain as a partner for a period not exceeding 30 months and subject to a condition of no recourse to public funds (unless there are exceptional grounds requiring access to public funds on the basis that the applicant is destitute).

Where an applicant is granted further limited leave under para D-ILRP.1.2 he should be advised that should the reason at (a) and/or (b) be overcome, he can make a further application for settlement at any time within the 30-month period.

The application will be refused if the applicant does not meet all the eligibility requirements for indefinite leave to remain as a partner and does not qualify for further leave to remain as a partner under para D-ILRP.1.2 or for limited leave to remain as a partner in accordance with para R-LTRP.1.1(a), (b) and (d) (see 8.4.2).

## **8.7 INDEFINITE LEAVE TO REMAIN (SETTLEMENT) AS A BEREAVED PARTNER**

What if, before the relevant five- or 10-year probationary period is completed, the applicant's partner dies? In these circumstances, if the bereaved partner wishes to remain in the UK permanently, he should apply for settlement.

By para BPILR.1.1, the applicant will have to meet the following requirements:

- (a) the applicant must be in the UK;
- (b) the applicant must have made a valid application for indefinite leave to remain as a bereaved partner;
- (c) the applicant must not fall for refusal under any of the grounds in Section S-ILR: Suitability for indefinite leave to remain (see 8.6.3); and
- (d) the applicant must meet all of the requirements of Section E-BPILR: Eligibility for indefinite leave to remain as a bereaved partner (see 8.7.1).

### **8.7.1 Eligibility requirements**

By para E-BPILR.1.2, the applicant's last grant of limited leave must have been as:

- (a) a partner (other than a fiancé(e) or proposed civil partner) of a British citizen or a person settled in the UK; or
- (b) a bereaved partner.

By para E-BPILR.1.3, the person who has died must have been the applicant's partner at the time the applicant was last granted limited leave under Appendix FM.

By para E-BPILR.1.4, at the time of the partner's death the relationship between the applicant and the partner must have been genuine and subsisting (see 8.3.5.5), and each of the parties must have intended to live permanently with the other in the UK (see 8.3.5.9).

Home Office guidance is that normally detailed enquiries as to the subsistence of the marriage, civil partnership or relationship will not be made unless there are already doubts expressed on the file. In most cases, provided the eligibility requirements are met, the application will be granted on sight of the partner's death certificate and without further enquiry.

In cases of doubt, for example where there were doubts expressed at the time of granting the initial period of leave to remain, or where allegations have since been made about the genuine and subsisting nature of the relationship, it may be appropriate to refuse the application. However, as the Home Office guidance recognises, it must be borne in mind that the burden of proof on the Secretary of State will be very high in view of the fact that the applicant will no longer be in a position to prove the subsistence of the relationship.

### 8.7.2 Timeliness of application

Home Office guidance is that this provision is intended to benefit only those whose sponsor has died during the probationary period and who make their application whilst they still have limited leave to enter or remain in the UK.

The provision is also applied where the sponsor dies after an application for settlement has been submitted but before a decision has been reached.

Is the fact that a sponsor dies during the very early stages of the probationary period considered by the Home Office as an adverse factor in reaching a decision? No: Home Office guidance is that where an applicant can meet the requirements, the application is to be granted regardless of how much of the probationary period has been completed.

What if the application is made after the applicant's existing leave has expired? Home Office guidance is that an applicant does not need to comply with the requirement not to have overstayed by more than 28 days (para E-LTRP 2.2 at **8.4.6**), provided that the circumstances of any period of overstaying relates to a period of bereavement and where compassionate circumstances therefore apply. Applications made out of time where all the other requirements are met should be considered sympathetically. An application should not normally be refused solely on the grounds that the applicant is here without leave. Acceptable reasons for the delay in making an application could be that the partner's death only occurred shortly before the application for settlement was due, or that the stress of the situation led the applicant to overlook the need to regularise his immigration status.

### 8.7.3 Decision on application

If the applicant meets all of the requirements set out at **8.7** above, he will be granted indefinite leave to remain.

But what if the applicant cannot meet all of the requirements? Paragraph D-BPILR.1.2 has a limited concession. It provides that if the only requirement not met is either para S-ILR.1.5 or 1.6, he will be granted further limited leave to remain for a period not exceeding 30 months (subject to a condition of no recourse to public funds). The applicant should be informed that if he is granted a further period of limited leave under para D-BPILR1.2, he can make a further application for settlement at any time within the 30-month period if the requirement is met.

If the applicant does not meet the requirements for indefinite leave to remain as a bereaved partner, or limited leave to remain as a bereaved partner under para D-BPILR.1.2, the application will be refused.

What if the applicant does not wish to settle in the UK but intends to leave the UK, eg to return to his country of origin? In these circumstances, Home Office guidance is that the applicant may be granted further leave to remain for six months, subject to the same conditions, to give him time to sort out his affairs.

## 8.8 INDEFINITE LEAVE TO REMAIN (SETTLEMENT) AS A PARTNER WHO IS A VICTIM OF DOMESTIC VIOLENCE

What if the couple separate due to domestic violence before the relevant probationary period is completed? In these circumstances, if the applicant wishes to remain in the UK permanently, he should apply for settlement.

By para DVILR.1.1, the applicant will have to meet the following requirements:

- (a) the applicant must be in the UK;
- (b) the applicant must have made a valid application for indefinite leave to remain as a victim of domestic violence;

- (c) the applicant must not fall for refusal under any of the grounds in Section S-ILR: Suitability for indefinite leave to remain (see **8.6.3**); and
- (d) the applicant must meet all of the requirements of Section E-DVILR: Eligibility for indefinite leave to remain as a victim of domestic violence (see **8.8.1**).

### **8.8.1 Eligibility requirements**

By para E-DVILR.1.2, the applicant's last grant of limited leave must have been:

- (a) as a partner (other than a fiancé(e) or proposed civil partner) of a British citizen or a person settled in the UK;
- (b) granted to enable access to public funds pending an application under this provision; or
- (c) granted under para D-DVILR.1.2 (see **8.8.2**).

Paragraph E-DVILR.1.3 provides that the applicant must provide evidence that during the last period of limited leave as a partner, his relationship broke down permanently as a result of domestic violence. Note first that there needs to be a causal link between the infliction of domestic violence on the applicant and the permanent breakdown of the relationship. Secondly, consideration needs to be given as to what evidence might be available. Has the applicant's partner been convicted of assaulting the applicant or formally cautioned by the police? Many victims of domestic violence do not tell anyone. Whatever the circumstances, the detailed guidance issued by the Home Office on this requirement should be consulted.

### **8.8.2 Decision on application**

If the applicant meets all of the requirements set out at **8.8**, he will be granted indefinite leave to remain.

But what if the applicant cannot meet all of the requirements? Paragraph D-DVILR.1.2 has a limited concession. It provides that if the only requirement not met is para S-ILR.1.5 or 1.6, he will be granted further limited leave to remain for a period not exceeding 30 months. The applicant should be informed that if granted a further period of limited leave under para D-DVILR.1.2, he can make a further application for settlement at any time within the 30-month period if the requirement is met.

If the applicant does not meet the requirements for indefinite leave to remain as a victim of domestic violence, or further limited leave to remain under para D-DVILR.1.2, the application will be refused.

## **8.9 CHILDREN ENTERING FOR IMMEDIATE SETTLEMENT**

### **8.9.1 Who is a child?**

A child is a person under the age of 18 at the date he applies for entry clearance. So it is irrelevant if he turns 18 before the ECO decides his application or before travelling to the UK under his visa or entry certificate (see paras 27 and 321(ii) respectively of the Immigration Rules).

This route is only available to a child outside the UK. A child cannot switch into this route whilst in the UK.

### **8.9.2 Exempt groups**

A child will usually need to apply for entry clearance under Part 8 of the Immigration Rules to join a parent, both parents or a relative who is already settled in the UK. The child will need to apply for entry clearance, and if granted can enter the UK for the purposes of immediate settlement. However, those Rules will not apply to the following:

- (a) children who are British citizens (see **Chapter 2**);

- (b) children who have rights of residence in the UK as the family member of an EEA national (see **Chapter 4**).

**EXAMPLE**

Eva is a German citizen, aged 17. Her father, also German, is working in the UK. She is entitled to enter the UK in her own right (I(EEA) Regs 2016, reg 11). Whether she has any right of residence beyond three months (reg 14) depends on establishing a qualifying status under reg 6. In the alternative, she can enter and reside as the family member of her father who is an EEA national. The Immigration Rules do not apply.

### 8.9.3 Who is a parent?

The term ‘parent’, for the purposes of the Immigration Rules, is defined in para 6 and includes:

- (a) the step-father of a child whose father is dead, and the reference to ‘step-father’ includes a relationship arising through civil partnership;
- (b) the step-mother of a child whose mother is dead, and the reference to ‘step-mother’ includes a relationship arising through civil partnership;
- (c) the father, as well as the mother, of an illegitimate child where he is proved to be the father;
- (d) an adoptive parent (provided that the child was legally adopted in a country whose adoption orders are recognised by the UK – see **8.9.6**);
- (e) 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/parents’ inability to care for the child.

### 8.9.4 Entry clearance requirements

Normally a child will be seeking entry clearance to join one or both parents who are already settled in the UK. Exceptionally, he might be joining a relative who is here and settled. Note that these people are often called the child’s ‘sponsor’.

The requirements are set out in para 297.

#### 8.9.4.1 Overview of requirements

The starting point is to identify the parent, parents or relative the child is seeking to join in the UK, as listed in para 297(i)(a)–(f). Unless one of those categories is established, the application will fail at this first hurdle.

Then proceed to consider the remaining requirements in para 297(ii)–(v). The main issues normally concern the child’s maintenance and accommodation in the UK.

As you would expect, there is a requirement to obtain entry clearance (see para 297(vi)).

#### 8.9.4.2 Parent, parents or relative

There are four straightforward categories of entry for a child. These are listed in para 297(i), as follows:

- (a) both parents are present and settled in the UK; or
- (b) both parents are being admitted on the same occasion with the child for settlement; or
- (c) one parent is present and settled in the UK and the other parent is being admitted on the same occasion with the child for settlement; or
- (d) one parent is present and settled in the UK or being admitted on the same occasion with the child for settlement, and the other parent is dead.

As can be seen, (a)–(c) involve both parents; in (d) one parent is dead.

it will take place within the next six months. In those circumstances any further leave will be for six months only and subject to a condition of no recourse to public funds and a prohibition on employment.

Paragraph E-LTRP.1.12 provides that the applicant's partner cannot be the applicant's fiancé(e) or proposed civil partner, unless the applicant was granted entry clearance as that person's fiancé(e) or proposed civil partner.

#### 8.4.6 Immigration requirements

Paragraph E-LTRP.2.1 excludes certain people already in the UK from switching into this category, namely, a visitor (see Chapter 5), or a person with valid leave granted for a period of six months or less, unless that leave is as a fiancé(e) or proposed civil partner, or a person on temporary admission (see 3.5.5).

By para E-LTRP.2.2(b), the applicant must not be in the UK in breach of immigration laws (any period of overstaying for a period of 14 days or less may be ignored (see 3.6.5)), unless para EX. 1 applies (see 8.5).

#### 8.4.7 Financial requirements

Generally, by paras E-LTRP.3.1–3.3 the same financial provisions apply as for entry clearance (see 8.3.6). The key differences to note are as follows:

- (a) Income from specified lawful employment or self-employment (Categories A, B, F and G – see 8.3.6.3) of the applicant can now be included to meet the financial requirement, provided he is in the UK with permission to work. The only partner prohibited from working is a fiancé(e) or proposed civil partner.

##### **EXAMPLE**

Luke is a visa national. Over two years ago he entered the UK as the partner (spouse) of Rachel, a British citizen. He was accompanied by his dependent child, Ambrose. Luke and Ambrose are now applying for leave to remain for a further 30 months under Appendix FM to the Immigration Rules. The financial requirement Luke must meet is a minimum gross annual income of £22,400 (ie £18,600 for himself and £3,800 for Ambrose).

Both Rachel and Luke have had the same jobs for over a year. Luke produces the specified documents evidencing the following financial resources: his annual salary from employment of £11,750, plus Rachel's annual salary from employment of £13,250. Together that totals £25,000 and so the minimum gross annual income is met.

- (b) An applicant does not have to meet the financial requirement, nor the alternative maintenance test (see 8.3.6.9) if para EX.1 applies (see 8.5).

#### 8.4.8 Accommodation requirements

By para E-LTRP.3.4, the same accommodation provisions apply as for entry clearance (see 8.3.7) unless para EX.1 applies (see 8.5).

#### 8.4.9 English language requirement

If the applicant has not already met this requirement in a previous application for leave as a partner, the applicant must now do so unless para EX.1 applies (see 8.5). The details are the same as for entry clearance (see 8.3.8). Note, however, that as from 1 May 2017, if the applicant only met the requirement previously by passing an English language test in speaking and listening at the minimum of level A1 of the Common European Framework of Reference for Languages, he must now pass it at level A2 or above.