IMMIGRATION DIRECTORATE INSTRUCTIONS

FAMILY MEMBERS UNDER THE IMMIGRATION RULES

Section FM 1.0

PARTNER & ECHR ARTICLE 8 GUIDANCE

This guidance is effective from 9 July 2012.

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1.0 INTRODUCTION

On 9 July 2012, Immigration Rules (HC 194) came into force introducing new requirements for those applying for leave to enter (entry clearance), leave to remain, further leave to remain and indefinite leave to remain in the UK as a family member. These rules provide a clear basis for considering immigration family and private life cases in compliance with Article 8 of the European Convention on Human Rights (the right to respect for private and family life). In particular, the new Immigration Rules reflect the qualified nature of Article 8, setting requirements which correctly balance the individual right to respect for private or family life with the public interest in safeguarding the economic well-being of the UK by controlling immigration and protecting the public from foreign criminals. The rules also take into account the need to safeguard and promote the welfare of children in the UK.

Since the 9 July three further statements of changes have been laid in light of Alvi v SSHD (Supreme Court judgment), to make amendments which are technical in nature and serve to ensure the new family Rules deliver the original policy intention and to make amendments for the new criminality threshold. These statements of changes are Cm8428 which came into force on 20 July 2012, HC565 which came into force on 6 September 2012 and HC 760 which came into force on 13 December 2012.

This guidance applies to:

1. applications for entry clearance, leave to remain, further leave to remain and indefinite leave to remain in the UK submitted on or after 9 July 2012 by an applicant who first applied for leave to enter or remain on or after that date, as a:
   - partner – a fiancé(e), proposed civil partner, spouse, civil partner, same sex partner or unmarried partner of a person who is:
     - a British citizen; or
     - present and settled in the UK; or
     - in the UK with limited leave as a refugee or person granted humanitarian protection
   - bereaved partner (other than fiancé(e) or proposed civil partner) of a British citizen or person settled in the UK; and

2. considerations of the right to respect for Family and/or Private life where subject to paragraph Gen.1.9. of Appendix FM a valid application is not required i.e. in the following cases where a claim is raised:
   - as part of an asylum claim, or as part of a further submission in person after an asylum claim has been refused; or
   - where a migrant is in immigration detention; or
   - where removal directions have been set pending an imminent removal; or
   - in an appeal; or
   - in response to a (one stop) notice issued under section 120 of the Nationality, Immigration and Asylum Act 2002; and
   - in any of the circumstances specified in paragraph GEN.1.9.(a) the requirements of paragraphs R-LTRP.1.1.(c) and R-LTRPT.1.1.(c) are not met.
Those who have applied before or been granted entry clearance, or limited leave or discretionary leave as a family member prior to the 9 July 2012 are subject to transitional arrangements. Generally they can continue their route to settlement under the Rules in force in part 8 on the 8 July 2012 with some exceptions as set out in Part 8.

See IDI on Family Members – Transitional Provisions:


The Rules are not replicated in this guidance except where further clarification is deemed appropriate for casework. Links to the Rules are provided where they are referred to. For ease of access via systems, links are provided for caseworkers via Horizon, ‘work tools and guides’ section of the UKBA intranet and UKBA internet for external access.

Where caseworkers are referred to this should be interpreted as including anyone making a decision on behalf of the Secretary of State including entry clearance officers and caseworkers across UKBA and Border Force.

NOTE: The caseworker should undertake a full consideration of the application before granting or refusing leave. Suggested refusal paragraphs for inclusion in correspondence with the applicant are contained at the end of each relevant section of this guidance.

NOTE: When considering an asylum case (where no formal application is required), the caseworker should look at the Rules in force at the date of consideration.

1.1 Purpose

Appendix FM and 276ADE of the Immigration Rules sets out the requirements to be met to qualify the right to leave to enter or remain in the UK on the basis of Family and Private life including Article 8 of the European Convention on Human Rights (ECHR) and the need to safeguard and promote the welfare of children in the UK.

Article 8 of the ECHR states that:

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

8(2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.
The Rules balance requirements against the right to respect for family and private life against the legitimate aims of protecting national security, public safety and the economic well-being of the UK; the prevention of disorder and crime; the protection of health or morals; and the protection of the rights and freedoms of others.

This guidance sets out how to consider applications against the requirements of the Immigration Rules. Failure to meet the requirements of the Rules will normally mean failure to establish an Article 8 claim to enter or remain in the UK, and no grant of leave on that basis.

If an applicant in the UK or overseas who is a spouse, civil partner, unmarried or same sex partner makes an application under the new Rules, on the correct application form and paying the relevant application fee, and meets all the requirements at every stage: entry (including the rules on switching between migration routes in the UK), further leave to remain and indefinite leave to remain, they may be eligible to reach settlement after five years (granted after periods of entry clearance of 33 months, followed by further leave for a period of 30 months, with a third application for indefinite leave to remain).

If an applicant cannot meet the requirements for the five year route, they can still make an application under the new Rules, on the correct application form and paying the relevant application fee, and be granted leave if they meet the requirements for the 10-year route, under the provisions of EX.1. As they cannot meet all the requirements of the five year family route, they will have a longer route to settlement: 10 years (granted in four periods of 30 months, with a fifth application for indefinite leave to remain).

Those who have a claim or wish to make a claim for leave on the basis of Article 8 and who are not required to make a valid application (as defined in Gen.1.9.) can only be granted leave to remain on a 10 year route to settlement (see GEN.1.9.(b)). All applications for further leave after the applicant has entered the family route must be valid, made on the correct form and accompanied with the correct fee.

Appendix FM also needs to be read with Appendix FM-SE which sets out the specified evidence for family cases and Appendix O which sets out the list of English language tests approved by UKBA of applications for limited leave to enter or remain.

2. GENERAL PROVISIONS

2.1 Purpose

Section Gen.1.1. – Gen.2.2.of Appendix FM sets out general provisions under these Rules.

Caseworkers should refer to general provisions in full when undertaking a decision:

http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/app-family-members/general/

This guidance applies to decisions on applications for leave to enter or remain in the UK on the basis of their family life as a partner of a British Citizen, person settled and
present in the UK, or person in the UK with limited leave as a refugee or humanitarian protection and the applicant cannot seek leave to enter or remain in the UK as their family member under Part 11 of the rules. A person present and settled in the UK includes a person who is being admitted for settlement on the same occasion as the applicant.

This guidance also applies to applications for leave on the basis of Article 8, and is applicable to considering Article 8 and family life claims under circumstances where under Gen.1.9. a valid application is not required:

GEN.1.9. The requirement to make a valid application will not apply when the Article 8 claim is raised:

(a)(i) as part of an asylum claim, or as part of a further submission in person after an asylum claim has been refused;
(ii) where a migrant is in immigration detention;
(iii) where removal directions have been set pending an imminent removal;
(iv) in an appeal; or
(v) in response to a (one stop) notice issued under section 120 of the Nationality, Immigration and Asylum Act 2002; and
(b) where the Article 8 claim is raised in any of the circumstances specified in paragraph GEN.1.9.(a) or is considered by the Secretary of State under paragraph A277C of these rules, the requirements of paragraphs R-LTRP.1.1.(c) and R-LTRPT.1.1.(c) are not met.

This means that no fee is required in order to consider Article 8 under one of the specified circumstances above.

A ‘partner’ within the Rules at Gen 1.2 is defined as:

(i) the applicant’s spouse;
(ii) the applicant’s civil partner;
(iii) the applicant’s fiancé(e) or proposed civil partner; or
(iv) a person who has been living together with the applicant in a relationship akin to a marriage or civil partnership for at least two years prior to the date of application.

Under general provision (GEN.1.5.) if an Entry Clearance Officer, or the Secretary of State, has reasonable cause to doubt the genuineness of any document submitted in support of an application, and having taken reasonable steps to verify the document, is unable to verify that it is genuine, the document will be discounted for the purposes of the application.

The Rules contain all points of reference for refusal. Where we require specific evidence to demonstrate that requirements are met this is specified in Appendix FM-SE:

http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/appendix-fmse/
2.2. General Grounds for Refusal

Persons applying for entry clearance, leave to enter or leave to remain as a family member under Appendix FM are not subject to the General Grounds for Refusal, except for those provisions in paragraph 320 (3), (10) and (11) and 322(1) which continue to apply:

http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/part9/

These are:

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

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

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

(i) overstaying; or

(ii) breaching a condition attached to his leave; or

(iii) being an illegal entrant; or

(iv) using deception in an application for entry clearance, leave to enter or remain or in order to obtain documents from the Secretary of State or a third party required in support of the application (whether successful or not); and

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

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

3. FAMILY LIFE WITH A PARTNER

The Immigration Rules provide the basis on which a person can enter or remain in the UK on the basis of their family life.

Applications for leave to enter, leave to remain or indefinite leave to remain as a
partner on the basis of family life and claims for leave on the basis of Article 8 will be considered under the provisions of Part 8 paragraphs 277-280, 289AA, 295AA, 296 and Appendix FM of the Immigration Rules:

http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/part8/

http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/app-family-members/

Limited leave will be granted in periods of 30 months (33 months for entry clearance to allow time for travel to be arranged) as an extension of leave or on either a 5 or 10 year family route to settlement (indefinite leave to remain) and subject to a condition of no recourse to public funds unless (in applications for the 10-year route) the applicant can evidence destitution (see section 8.0 on recourse to public funds). In fiancé(e) and proposed civil partner cases leave will be granted for up to 6 months.

If the applicant does not meet the requirements of the rules, the application should be refused.

3.1 ENTRY CLEARANCES AS A PARTNER

A consideration summary for a decision on an application for entry clearance as a partner can be found in Annex A of this guidance document.

The requirements to be met by a person seeking leave to enter as a partner of a British Citizen, a person present and settled in the UK, or a person in the UK with refugee leave or humanitarian protection under Section EC-P paragraph EC-P.1.1 are that:

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

Under general provision (GEN.1.5.) if an Entry Clearance Officer, or the Secretary of State, has reasonable cause to doubt the genuineness of any document submitted in support of an application, and having taken reasonable steps to verify the document, is unable to verify that it is genuine, the document will be discounted for the purposes of the application.

3.1.1 Suitability requirements

In all applications for entry clearance as a partner the caseworker should consider whether suitability requirements S-EC.1.1.-2.5. are met:

http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/app-family-members/family-life-as-a-partner/
An applicant **will be refused** entry clearance on the grounds of suitability according to S-EC.1.1. if any paragraphs under Section S-EC 1.2 to 1.7 apply (see refusal paragraphs at the end of this section of guidance).

An applicant **will normally be refused** on grounds of suitability if any of the paragraphs under Section S-EC 2.2 to 2.5 apply (see refusal paragraphs at the end of this section of guidance and the Criminality & General Grounds for Refusal guidance).


### 3.1.1a Criminality

The criminality criteria set out in Appendix FM paragraph S-EC.1.1. – 1.5. and 2.5. must be met in all applications for leave to enter where the application for entry clearance was made on or after 13 December 2012.

In addressing suitability criteria under paragraphs S-EC.1.1.-2.5. caseworkers must refer to the criminality & general grounds for refusal guidance; Criminality guidance for Article 8 ECHR cases:


Applications made before 13 December must continue to be considered under the criminality criteria set out in paragraphs S-EC.1.1. – 1.5 of Appendix FM of the Rules in place on 12 December 2012. See the Immigration Rules archive at: [UK Border Agency | Archive of Immigration Rules](http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/IDIs/idischapter13/article8.pdf?view=Binary)

### 3.1.2 Eligibility requirements: Relationship

In order to meet the eligibility requirements for entry clearance as a partner as required under E-ECP.1.1. all of the requirements in paragraphs E-ECP.2.1. to E-ECP.4.2. must be met.

#### 3.1.2a Present and settled

When addressing whether the applicant meets the requirement of E-ECP.2.1(b) the caseworker must be satisfied that the applicant’s partner is present and settled in the UK.

“Present and settled” means that the person concerned is settled in the UK and, at the time an application under these Rules is made, is physically present here or is coming here with or to join the applicant and intends to make the UK their home with the
applicant, if the application is successful.

For the purpose of Appendix FM a member of HM Forces serving overseas, or a permanent member of HM Diplomatic Service, or a comparable UK-based staff member of the British Council on a tour of duty abroad, or a staff member of the Department for International Development or the Home Office, who is a British citizen or settled in the UK, is to be regarded as present and settled in the UK. This is set out in paragraph 6 of the Immigration Rules.

3.1.2b Minimum age requirement

The applicant and the partner must be aged 18 or over at the date of application.

3.1.2c Prohibited degree of relationship

When addressing whether the applicant meets the requirement of E-ECP.2.4. the caseworker must be satisfied that the applicant and their partner are not within the prohibited degree of relationship as defined in the Marriage Act 1949, the Marriage (Prohibited Degrees of Relationship) Act 1986 and the Civil Partnership Act 2004. This definition is contained in Paragraph 6 of the Immigration Rules.

In England and Wales, the Marriage Act 1949[2] prohibits a marriage by a man and any of the persons mentioned in the first column, or between a woman and any of the persons mentioned in the second column, of the following table:

<table>
<thead>
<tr>
<th>Mother</th>
<th>Father</th>
</tr>
</thead>
<tbody>
<tr>
<td>Daughter</td>
<td>Son</td>
</tr>
<tr>
<td>Father’s mother</td>
<td>Father’s father</td>
</tr>
<tr>
<td>Mother’s mother</td>
<td>Mother’s father</td>
</tr>
<tr>
<td>Son’s daughter</td>
<td>Son’s son</td>
</tr>
<tr>
<td>Daughter’s daughter</td>
<td>Daughter’s son</td>
</tr>
<tr>
<td>Sister</td>
<td>Brother</td>
</tr>
<tr>
<td>Father’s sister</td>
<td>Father’s brother</td>
</tr>
<tr>
<td>Mother’s sister</td>
<td>Mother’s brother</td>
</tr>
<tr>
<td>Brother’s daughter</td>
<td>Brother’s son</td>
</tr>
<tr>
<td>Sister’s daughter</td>
<td>Sister’s son</td>
</tr>
</tbody>
</table>

The Marriage (Prohibited Degrees of Relationship) Act 1986 prohibits a marriage to the following, 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>
<thead>
<tr>
<th>Daughter of former wife</th>
<th>Son of former husband</th>
</tr>
</thead>
<tbody>
<tr>
<td>Former wife of father</td>
<td>Former husband of mother</td>
</tr>
<tr>
<td>Former wife of father’s father</td>
<td>Former husband of father’s mother</td>
</tr>
</tbody>
</table>
The Marriage (Prohibited Degrees of Relationship) Act 1986 also prohibits a marriage to the following:

| 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 |

3.1.2d  Requirement for couple to have met in person

When addressing whether the applicant meets the requirement of E-ECP.2.5. the caseworker must be satisfied that the applicant and their partner have met in person.

3.1.2d(i) "To have met" has been interpreted by the Tribunal as "to make the acquaintance of" which means that provided the parties have made the acquaintance of each other, that acquaintance need not be in the context of marriage or civil partnerships. This means that if the parties had been childhood friends, it could be acceptable, although the meeting of two infants would not. A mutual sighting or mere coming face to face followed by telephone or written contact would not suffice. The Tribunal decided that "met" implies a face to face meeting itself resulting in the making of mutual acquaintance.

3.1.2d(ii) Where the caseworker is not satisfied that the couple have met in person, the application should be refused.

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

3.1.2e Genuine and subsisting relationship

When addressing whether the applicant meets the requirement of E-ECP.2.6 the caseworker must be satisfied that the relationship between the applicant and their partner is genuine and subsisting.

An applicant applying as an unmarried partner or same sex partner must have been living with their partner in a relationship akin to a marriage or civil partnership for at least two years prior to the date of application.
Applicants applying as an unmarried partner or same sex partner will be expected to supply documentary evidence that they have been living together in a relationship akin to a marriage or civil partnership for at least two years (see Section FM 9.1 to this Section).

For guidance on assessing whether a relationship is genuine and subsisting, please refer to Section FM 2.1 of the IDI Genuine and Subsisting Relationship.

For further guidance on doubtful cases refer to Section FM 1.1 Doubtful Cases.

3.1.2f Assessing whether a marriage or civil partnership is valid

When addressing whether an applicant meets the requirements of E-ECP.2.7. the caseworker must be satisfied that the applicant and partner are in a valid marriage or civil partnership. Evidence of marriage or civil partnership is specified in Appendix FM-SE paragraphs 22-26.

The applicant and sponsor must provide evidence that their marriage or civil partnership is valid in the UK. For further guidance refer to Section FM 1.3 Recognition of marriage and divorce or Section FM 9.1 Civil partnerships, eligibility, registration, dissolution & glossary of terms.

3.1.2g Fiancé (e) or proposed civil partner seeking entry to enable the marriage or civil partnership to take place

Caseworkers must be satisfied that an applicant seeking entry as a fiancé(e) or proposed civil partner is coming to the UK to enable the marriage or civil partnership to take place.

3.1.2h Evidence that any previous relationship has broken down

The caseworker must be satisfied that any previous relationship of the applicant or their partner must have broken down permanently to determine whether the requirements of E-ECP.2.9. are met, unless it is a polygamous marriage or civil partnership which falls within paragraph 278(i) of the Rules.

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

http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/appendix-fmse/

3.1.2i Assessing the intention to live together permanently in the UK

The caseworker must be satisfied that the applicant and their partner intend to live together permanently in the UK to meet the requirements of E-ECP.2.10.

"Intention to live together permanently" means an intention to live together, evidenced by a clear commitment from both parties that they will live together permanently in the
UK immediately following the outcome of the application in question or as soon as circumstances permit thereafter as set out in paragraph 6 of the Immigration Rules.

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

3.1.3 Eligibility requirements: Financial

To qualify for entry clearance as a partner an applicant must provide the specified evidence as defined in Appendix FM-SE paragraphs A1-21 for the permitted sources of income and savings and the time periods and permitted combinations of sources applicable to each permitted source relied upon to meet the financial requirement as set out in Section E-ECP.3.1 - 3.3:

http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/appendix.fmse/

For guidance on the financial requirement, caseworkers should refer to Financial Requirement IDI Section FM 1.7.

http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/IDIs/chp8-annex/section-FM-1.7.pdf?view=Binary

NOTE: Copies of all documentary evidence submitted in line with Appendix FM-SE should be retained on file, in chronological order.

3.1.3a Accommodation

An applicant must evidence that they meet the accommodation requirement in paragraph E-ECP 3.4. for entry clearance as a partner. The evidence must show that there will be adequate accommodation, without recourse to public funds, for the family, including other family members who are not included on the application but who live in the same household, which the family own or occupy exclusively.

Accommodation will not be regarded as adequate if:

(a) it is, or will be, overcrowded; or
(b) it contravenes public health regulations.

For further guidance on assessing whether the accommodation requirement is met see IDI Annex F Chapter 8 Section 1 & 2 paragraph 6:


3.1.4 Eligibility requirements: English language

The applicant must provide evidence as specified in Appendix FM-SE paragraphs 27-32 to demonstrate that the English language requirements as set out at E-
ECP.4.1. to E-ECP 4.2. are met.

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

- by passing an English language test in speaking and listening at a minimum of level A1 of the Common European Framework of Reference for Languages (CEFR) with a provider approved by the UK Border Agency, or
- by being a national of a majority English speaking country listed in paragraph Gen 1.6, or
- by having an academic qualification equivalent to a Bachelor’s or Master’s degree or PhD in the UK, which was taught in English.

The applicant is exempt from the English language requirement if at the date of application:

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

For further guidance on English Language refer to the English Language IDI:


3.1.5 Decision on entry clearance as a partner

3.1.5a Granting leave to enter as a partner (spouse, civil partner, unmarried and same sex partner)

If the applicant satisfies the requirements for entry clearance as a partner (not a fiancé or proposed civil partner) they should be granted entry clearance for an initial period of no more than 33 months under Appendix FM section D-ECP paragraph D-ECP.1.1. with no recourse to public funds.

Applicants should be advised they will need to make an application for further leave for 30 months once they have competed a period of 30 months with leave to enter. They should make their application no more than 28 days before their leave is due to expire. They may be eligible to settle after completing 60 months (5 years) with leave as a partner.

3.1.5b Granting leave to enter as a fiancé (e) or proposed civil partner

If the applicant meets the requirements for entry clearance as a partner where they are a fiancé(e) or proposed civil partner they should be granted entry clearance for a period not exceeding 6 months, subject to a condition of no recourse to public funds and to a prohibition on employment in the UK.
The applicant should be advised that they will be eligible to apply for leave to remain in the UK as a partner once the marriage or civil partnership has taken place.

Following the marriage or civil partnership and a subsequent successful application for leave as a partner on the five year route, they may be eligible to settle after completing 60 months (5 years) with leave as a partner.

http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/app-family-members/family-life-as-a-partner/

3.1.5c Refusal of leave to enter

Where the applicant does not meet the requirements for entry clearance as a partner the application should be refused under D-ECP.1.2.

3.1.6 Refusal paragraphs

Note: The following wordings are examples - they do not constitute an exhaustive list of all possible refusal paragraphs.

The refusal letter should state:

"You have applied for entry clearance as the [relationship] of [......]";

go on to state where the applicant has failed to meet the requirements of the Immigration Rules using (where possible) the following paragraphs (see paragraph 3.1.7(a) and then state the following:

"For these reasons your application for leave to enter the UK as a partner is refused under paragraph D-ECP.1.2. Appendix FM of the Immigration Rules";

followed by standard closing paragraphs with reference to rights of appeal.

3.1.6a Suitability (Appendix FM: S-EC):

The Secretary of State has personally directed that your exclusion from the United Kingdom is conducive to the public good. You therefore fail to meet the requirement for entry clearance as a partner because paragraph S-EC.1.2. of Appendix FM of the Immigration Rules applies.

Fails on basis of deportation order

At the date of application you are/were the subject of a deportation order issued on [insert date of deport order]. You therefore fail to meet the requirement for entry clearance as a partner because paragraph S-EC.1.3. of Appendix FM of the Immigration Rules applies.

Fails on basis of criminality, conduct, character and associations

See refusal wording in Criminality & General Grounds for Refusal Guidance for
refusals under S-EC.1.4 and S-EC.2.5. See:


Conduct/character/associations or other reasons

Your exclusion from the UK is conducive to the public good because [insert reasons why conduct/character/associations/other reasons make it undesirable to grant entry clearance - this could include convictions which do not fall within paragraph S-EC.1.4]. You therefore fail to meet the requirement for entry clearance as a partner because paragraph S-EC.1.5. of Appendix FM of the Immigration Rules applies.

Fails on basis of non-compliance

You have failed to [attend an interview/provide information/ provide physical data/undergo a medical examination, or provide a medical report]. You have stated that [insert any reason given by the applicant for his non-compliance and reason why reason not accepted / or You have provided no reasonable excuse for your failure to comply with this requirement]. You therefore fail to meet the requirement for entry clearance as a partner because paragraph S-EC.1.6. of Appendix FM of the Immigration Rules applies.

Fails on the basis of medical reasons

I have received confirmation from the Medical Referee that for medical reasons it is undesirable to admit you to the UK. You therefore fail to meet the requirement for entry clearance as a partner because paragraph S-EC.1.7. of Appendix FM of the Immigration Rules applies.

Fails on the basis of false representations

[Insert nature of document or date of and nature of false representations or information] was submitted in support of your application. This/These [document/information/representations] is/are false [insert basis for assessing document/information is false]. I have considered whether you should nevertheless be granted entry clearance but have concluded that the exercise of discretion is not appropriate on this occasion because (insert reasons). You therefore fail to meet the requirement for entry clearance as a partner because paragraph S-EC.2.2. (a) of Appendix FM of the Immigration Rules applies.

Refused on basis of failure to disclose material facts

In your application, [you or another person] failed to disclose the following facts [state facts]. I am satisfied that these facts were material to the application because [state reasons]. I have considered whether you should nevertheless be granted entry clearance but have concluded that the exercise of discretion is not appropriate on this occasion because (insert reasons). You therefore fail to meet the requirement for entry clearance as a partner because paragraph S-EC.2.2. (b) of Appendix FM of the Immigration Rules applies.
Refused on basis of debts owing to NHS

The Secretary of State is satisfied that you have failed to pay an outstanding charge or charges with a total value of at least £1000 in respect of National Health Service (NHS) treatment that you have received. This is in accordance with the relevant NHS regulations on charges for overseas visitors, based on evidence received from [insert name of relevant NHS body]. [Insert reasons).

In light of this, the Secretary of State has deemed that refusal is appropriate and is not prepared to exercise discretion in your favour. You therefore fail to meet the requirement for entry clearance as a partner because paragraph S-EC.2.3. of Appendix FM of the Immigration Rules applies.

Fails on the basis of lack of maintenance and accommodation undertaking

On [date] a maintenance and accommodation undertaking from [name of sponsor] was requested [under paragraph 35 of the Immigration Rules or otherwise]. No such undertaking has been provided. I have considered whether you should nevertheless be granted entry clearance but have concluded that the exercise of discretion is not appropriate on this occasion [include reasons for consideration of discretion]. You therefore fail to meet the requirement for leave to enter as a partner because paragraph S-EC.2.4. of Appendix FM of the Immigration Rules applies.

3.1.6b Eligibility (Appendix FM: E-ECP):

Fails on the basis of immigration status of partner

Your partner is not in the UK or returning to the UK with you as your partner/Your partner is not a British citizen/Your partner is not present or settled in the UK or being admitted for settlement on the same occasion as you/Your partner is not in the UK with refugee leave or humanitarian protection. You therefore fail to meet the requirements of paragraph E-ECP.2.1. of Appendix FM of the Immigration Rules.

Fails on the basis of age

You were under the age of 18 at the date of your application. You therefore fail to meet the requirement of paragraph E-ECP.2.2. of Appendix FM of the Immigration Rules.

Your partner was under the age of 18 at the date of your application. You therefore fail to meet the requirement of paragraph E-ECP.2.3. of Appendix FM of the Immigration Rules.

Fails on the basis of degree of relationship

You are the [insert relationship to partner] of [insert name]. This relationship is within the prohibited degree of relationship as defined by [delete where applicable the Marriage Act 1949, the Marriage (Prohibited Degrees of Relationship) Act 1986 and
Civil Partnership Act 2004]. You therefore fail to meet the requirement of paragraph E-ECP.2.4. of Appendix FM of the Immigration Rules.

**Refused on requirement to have met in person**

It is considered that you and your partner have not met in person because [insert reason why it is not accepted that applicant and partner have met in person]. As it cannot be verified that you and your partner have met, you fail to meet the requirement of paragraph E-ECP.2.5. of Appendix FM of the Immigration Rules.

**Refused on genuine and subsisting relationship**

It is not accepted that your relationship with your partner is genuine and subsisting [insert reasons why not accepted]. You therefore fail to meet the requirement of paragraph E-ECP.2.6. of Appendix FM of the Immigration Rules.

**Fails on the basis of a valid marriage or civil partnership**

You have not provided specified evidence that you and your partner are in a valid marriage/have entered into a valid civil partnership. The evidence you have provided is not accepted because [insert reasons]. You therefore fail to meet the requirement of paragraph E-ECP.2.7. of Appendix FM of the Immigration Rules.

**Refused on basis that previous relationship has broken down permanently**

On [insert date of previous marriage/civil partnership] you were married to/entered into a civil partnership with [insert name of previous partner if appropriate]. You have not provided sufficient evidence that this marriage/civil partnership has been dissolved. There is no evidence that this is not a polygamous relationship that falls within paragraph 278(i) of the Immigration Rules. You therefore fail to meet the requirement of paragraph E-ECP.2.9. of appendix FM of the Immigration Rules.

**Fails on the basis of intention to live together permanently in the UK.**

It is not accepted that you and your partner intend to live together permanently in the UK because [insert reason why intention to live together permanently in the UK is not accepted]. You therefore fail to meet the requirement of paragraph E-ECP.2.10. of Appendix FM of the Immigration Rules.

**Fiancé(e) or proposed civil partner only – Fails on the basis of seeking entry for marriage or civil partnership**

I am not satisfied that you are seeking entry to the UK to enable your marriage/civil partnership to take place [insert reasons]. I therefore refuse your application under paragraph E-ECP.2.8. of Appendix FM of the Immigration Rules.

**Fails where applicant does not meet the financial requirement**

**Note:** When considering financial requirements for leave to enter as a partner the caseworker should refer to the Financial Requirement Guidance, which also contains
specific refusal paragraphs:

http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/IDIs/chp8-annex/section-FM-1.7.pdf?view=Binary

The circumstances of your family require you to demonstrate that [you meet the financial requirement of [insert required levels of funds]] or [your partner is in receipt of one or more of the allowances or benefits listed in E-ECP.3.3. (a)(i)-(v)].

You have failed to demonstrate you are able to meet this requirement through the methods detailed from E-ECP.3.1. to E-ECP. 3.4. as;

[insert details why applicant fails to meet financial requirement using refusal paragraphs as set out in the financial requirement guidance – including where the applicant has failed to provide specified evidence under Appendix FM-SE paragraph 12].

You therefore fail to meet the requirements of E-ECP.3.1. to E-ECP. 3.4. of Appendix FM of the Immigration Rules.

Fails on the basis that the applicant can be adequately maintained and accommodated without recourse to public funds where E-ECP.3.3. applies

You meet the requirements of paragraph E-ECP.3.3(a) as your partner is in receipt of disability living allowance/severe disablement allowance/industrial injury disablement benefit/attendance allowance/carer’s allowance. In order to meet the requirements of these Rules you and your partner must also be able to maintain and accommodate yourselves and any dependants adequately in the UK without recourse to public funds. I am not satisfied that you and your partner are able to maintain and accommodate yourselves and any dependants adequately in the UK without recourse to public funds. You therefore fail to meet the requirement of paragraph E-ECP.3.3.(b)of Appendix FM of the Immigration Rules.

Fails on the basis of adequate accommodation

You are required to provide evidence that adequate accommodation, without recourse to public funds, will be available for your family. You have failed to provide this evidence / the evidence you have provided does not demonstrate that adequate accommodation without recourse to public funds will be available. [Insert reasons to doubt accommodation or explain why it is overcrowded etc]. You therefore fail to meet the requirements of E-ECP. 3.4. of Appendix FM of the Immigration Rules.

Fails on English language requirement

You are not exempt from the English language requirement under paragraph E-ECP.4.2. In addition, you are not a national of a majority English speaking country listed in paragraph GEN 1.6 and have not passed an English language test in speaking and listening at a minimum of level A1 of the Common European Framework with a provider approved by UKBA and/or do not hold an academic qualification recognised by NARIC UK to be the equivalent to the standard of a
Bachelor's or Master's degree or PhD in the UK, which was taught in English. You therefore fail to meet the requirement of paragraph E-ECP.4.1. and E-ECP4.2 of Appendix FM of the Immigration Rules.

3.1.7 Exceptional Circumstances

Where an application for entry clearance as a partner falls for refusal under the Immigration Rules, the caseworker should also consider whether there are any exceptional circumstances which might lead to a grant of leave to enter outside the rules. For further details please see section 3.2.7d.

3.2 LEAVE TO REMAIN AS A PARTNER

A consideration summary for a decision on an application for limited leave to remain as a partner can be found in Annex B of this guidance document.

3.2.1 Requirements for limited leave to remain as a partner

The requirements to be met by a person seeking leave to remain as a partner of a British Citizen, a person present and settled in the UK or a person in the UK with refugee leave or humanitarian protection under Appendix FM section R-LTRP paragraph R-LTRP.1.1.

http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/ap p-family-members/family-life-as-a-partner/

are that:

(a) the applicant and their partner must be in the UK;
(b) the applicant must have made a valid application for limited or indefinite leave to remain as a partner; 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 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 requirements of paragraphs E-LTRP.1.2-1.12. and E-LTRP.2.1.; and
(iii) paragraph EX.1. applies.

3.2.2 Suitability requirements

In all applications for leave to remain as a partner the caseworker should consider whether suitability requirements S-LTRP.1.1.-3.1. are met:

http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/ap p-family-members/family-life-as-a-partner/
An applicant **will be refused** leave to remain on the grounds of suitability according to S-LTR.1.1 if any of the paragraphs under Section S-LTR 1.2 to 1.7 apply.

An applicant **will normally** be refused on grounds of suitability if any of the paragraphs under Section S-LTR 2.2. to 2.4. apply.

### 3.2.2a Criminality

The criminality criteria set out in Appendix FM paragraph S-LTR.1.1. – 1.6. must be met in all applications for leave to remain where the application is decided on or after 9 July 2012, regardless of the date of the application.

The caseworker should consider whether criminality which does not fall within S-LTR1.2.-1.4. allows the applicant to meet the requirements of S-LTR.1.5-1.6. In doing this caseworkers should look at whether the convictions mean the applicant’s presence in the UK is undesirable or non-conductive to the public good under conduct, character, associations or other reasons. The applicant can meet the suitability requirements even where there is some criminality.

If any of the grounds of suitability at S-LTR 1.2 to 1.7 apply the application should be refused.

In addressing suitability criteria under paragraph S-LTR.1.1. to S-LTR.1.6. caseworkers must refer to the criminality & general grounds for refusal guidance: Criminality guidance for Article 8 ECHR cases:


### 3.2.3 Eligibility requirements: Relationship

An applicant must meet all of the requirements of Section E-LTRP.1.2 to 4.2. to qualify on the 5 year route for settlement:


For further guidance on E-LTRP.1.2. – “present and settled” – see section 3.1.2a. above.

For further guidance on E-LTRP.1.3. and E-LTRP.1.4 see section 3.1.2b. above

For further guidance on E-LTRP.1.5. – “prohibited degree of relationship” – see section 3.1.2c. above.

For further guidance on E-LTRP.1.6. whether the applicant and their partner have
met in person see section 3.1.2d(i) to (ii). above.

For further guidance on E-LTRP.1.7. whether the relationship between the applicant and their partner is genuine and subsisting, see section 3.1.2e. above and caseworkers should refer to the Appendix FM Section FM 2.1 of the IDI on Genuine and Subsisting Relationships.

For further guidance on E-LTRP.1.8. assessing whether the marriage or civil partnership is valid see section 3.1.2f. above.

For further guidance on E-LTRP.1.9. whether any previous relationship of the applicant or their partner has broken down permanently, see section 3.1.2h. above.

"Intention to live together permanently" means an intention to live together, evidenced by a clear commitment from both parties that they will live together permanently in the UK immediately following the outcome of the application in question or as soon as circumstances permit thereafter as set out in paragraph 6 of the Immigration Rules.

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

Where limited periods of time have been spent outside of the UK this must be for good reasons and the reasons must be consistent with the intent to live together permanently in the UK. Good reasons could include time spent in connection with their or their partner’s employment, holidays, training or study.

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

3.2.4 Eligibility requirements: Immigration status

The immigration status requirements are set out in paragraphs E-LTRP.2.1.- 2.2. of Appendix FM. For leave to remain the applicant must not be in the UK:

- as a visitor;
- with valid leave granted for a period of 6 months or less, unless that leave is as a fiancé(e) or a proposed civil partner or was granted pending the outcome of family court or divorce proceedings; or
- on temporary admission or temporary release (unless paragraph EX1 applies).

The applicant must not have overstayed by more than 28 days on the date of application, unless paragraph EX.1. applies.
The 28 day period of overstaying is calculated from the latest of:

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

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

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

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

### 3.2.5 Eligibility requirements: Financial

An applicant must provide the evidence as specified in Appendix FM-SE that they meet the financial requirement in Section E-LTRP.3.1-3.3 to qualify for leave to remain as a partner:


For guidance on the financial requirement, caseworkers should refer to Financial Requirement IDI Section FM 1.7.

**NOTE:** Copies of all documentary evidence submitted should be retained on file, in chronological order.
3.2.5a Accommodation

An applicant must evidence that they meet the accommodation requirement in paragraph E-LTRP. 3.4 to qualify for leave to remain as a partner. The evidence must show that there will be adequate accommodation, without recourse to public funds, for the family, including other family members who are not included on the application but who live in the same household, which the family own or occupy exclusively unless EX.1. applies.

Accommodation will not be regarded as adequate if:

(a) it is, or will be, overcrowded; or
(b) it contravenes public health regulations.

For further guidance on assessing whether the accommodation requirement is met see IDI Annex F Chapter 8 Section 1 & 2 paragraph 6

3.2.6 Eligibility requirements: English language

The applicant must provide specified evidence to demonstrate that the English language requirements as set out at E-LTRP.4.1 to E-LTRP 4.2 are met.

For further guidance see section 3.1.4. above and Section FM 1.21 English Language Requirement:


NOTE: For LTR the applicant must meet the requirement if they have not met the language requirement in a previous application for Leave as a partner. So someone granted as a fiancé at EC who met the language requirement does not need to meet it again when they switch into the partner route via LTR.

Note: Caseworkers should complete an assessment of suitability and eligibility criteria for leave to remain in the UK when considering whether the applicant meets the requirements for limited leave to remain as a partner because EX.1 applies.

3.2.7 Consideration of Section EX: Exception

Where an applicant has asserted an Article 8 claim on the right to respect for family life or raised family life issues either as part of a valid application under Appendix FM, or in circumstances covered in GEN.1.9, the caseworker should consider whether the suitability and eligibility requirements for leave to remain are met and whether EX.1. applies.

Section EX paragraph EX.1. applies if:

EX.1. – (a) (i) the applicant has a genuine & subsisting relationship with a child who: (aa) is under the age of 18 years or was under the age of 18 years when the applicant was first granted leave on the basis that this
paragraph applied;
(bb) is in the UK;
(cc) is a British citizen or has lived continuously in the UK for at least the 7 years immediately preceding the date of application; and (ii) it would not be reasonable to expect the child to leave the UK; or
(b) the applicant has a genuine and subsisting relationship with a partner who is in the UK and is a British citizen, settled in the UK, or in the UK with refugee leave or humanitarian protection; and there are insurmountable obstacles to family life continuing outside the UK.

EX.1 applies where it is explicitly stated in the rules.

1. **Suitability Requirements** – an applicant must be refused if any of the suitability requirements set out in S-LTR.1.2 to 1.7 apply.

2. An applicant will normally be refused on the grounds of suitability if any of paragraphs S-LTR.2.2 to 2.4 apply.

3. **Eligibility Requirements** – some of the eligibility requirements have to be met in all cases, and some can be waived when EX.1 applies. **This means:**

   - **Relationship requirements** - all of the relationship requirements in E-LTRP.1.2 to 1.11 must be met.

   - **Immigration status requirements** – E-LTRP.2.1 (a) and (b) must be met. E-LTRP2.1 (c) and E-LTRP.2.2 can be waived where EX.1 applies.

   - **Financial requirements** – E-LTRP.3.1 to 3.4 can be waived where EX.1 applies.

   - **English language requirements** – E-LTRP.4.1 to 4.2 can be waived where EX.1 applies.

3.2.7a Assessing children’s best interests

For guidance on assessing children’s best interests please see guidance on the application of EX.1 to the consideration of a child’s best interests under the family rules and in Article 8 claims:


3.2.7b Article 8 and Zambrano

Following the European Court of Justice judgement in Ruiz Zambrano, the UK is required to grant EU law rights of entry and residence to the **primary carer** of a British Citizen who would be forced to leave the EU if a right of entry to or residence in the UK was not granted to their primary carer.
Where caseworkers consider there may be a Zambrano right they should refer to the following guidance which sets out how Zambrano and the Article 8 ECHR right to private and family life interact:

### 3.2.7c Assessing whether there are insurmountable obstacles

In determining whether there are “insurmountable obstacles”, the decision maker should consider the seriousness of the difficulties which the applicant and their partner would face in continuing their family life outside the UK, and whether they entail something that could not (or could not reasonably be expected to) be overcome, even with a degree of hardship for one or more of the individuals concerned.

The decision maker should look at whether there is an inability to live in the country concerned. The focus should also be on the family life which would be enjoyed in the country to which the applicant would be returned, not a comparison to the life they would enjoy were they to remain in the UK.

Lack of knowledge of a language spoken in the country in which the couple would be required to live would not usually amount to an insurmountable obstacle. It is reasonable to conclude that the couple must have been conversing in a commonly understood language whilst in the UK. Therefore, it is reasonable for that to continue outside the UK, whether or not the partner seeks to learn a/the language spoken in the country of proposed return.

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

(a) Ability of family to lawfully enter and stay in another country. The decision maker should consider the ability of the parties to lawfully enter and stay in the country concerned. However, the onus should be on the applicant to show that this is not possible in order for this to amount to an insurmountable obstacle. A mere wish/desire/preference to live in the UK would not amount to an insurmountable obstacle.

(b) Cultural and religious barriers. This might be relevant in situations where the partner would be so disadvantaged as for it to be unreasonable to expect them to live in that country. The test is a high one. It must be a barrier which either cannot be overcome or is unreasonable to expect a person to overcome.

(c) The impact of a mental or physical disability. Whether or not either party has a mental or physical disability, a move to another country may involve a normal period of hardship as the person adjusts to their new surroundings. But a physical or mental disability could in some circumstances mean that the degree of hardship which would be experienced by the person would be unreasonable to the extent that it amounts to an insurmountable obstacle.
3.2.7d Exceptional circumstances

Where the applicant does not meet the requirements of the rules refusal of the application will normally be appropriate. However, leave can be granted outside the rules where exceptional circumstances apply. Consideration of exceptional circumstances applies to applications for leave to remain and leave to enter.

“Exceptional” does not mean “unusual” or “unique”. Whilst all cases are to some extent unique, those unique factors do not generally render them exceptional. For example, a case is not exceptional just because the criteria set out in EX.1. of Appendix FM have been missed by a small margin. Instead, “exceptional” means circumstances in which refusal would result in unjustifiably harsh consequences for the individual such that refusal of the application would not be proportionate. 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:

a) The circumstances around the applicant’s entry to the UK and the proportion of the time they have been in the UK legally as opposed to illegally. Did they form their relationship with their partner at a time when they 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 their 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 their family life does not provide a basis for stay and they have a significant private life in the UK. Although under the rules family life and private life are considered separately, when considering whether there are exceptional circumstances private and family life can be taken into account.

If the applicant falls to be granted because exceptional circumstances apply in their case, they may be granted leave outside the rules for a period of 30 months and on a 10 year route to settlement. For asylum cases see Discretionary Leave guidance.

3.2.8 Consideration of paragraph 276ADE: Private Life

If private life is also raised in an application for leave as a partner, the caseworker should go on to consider whether the suitability and eligibility requirements for leave to remain in paragraph 276ADE are met.

Caseworkers should refer to guidance on private life which can be found here:


3.2.9 Decision on leave to remain as a partner
If the applicant satisfies the requirements for leave to remain as a partner they should be granted a period of 30 months leave on the 5 or 10 year family route to settlement in the UK as appropriate. Applicants will be eligible to apply for indefinite leave to remain after they have completed a period with limited leave as a partner of 60 or 120 months as appropriate.

3.2.10 Initial grant of leave to remain as a partner (where EX.1. is not applied)

Where an applicant is making an application to join the family route to settlement in the UK and they meet the requirements of R-LTRP.1.1.(a) to (c) the applicant will be granted leave to remain under D-LTRP.1.1 for 30 months on a five year route to settlement, subject to a condition of no recourse to public funds.

Applicants should be advised they will need to make an application for further leave for 30 months once they have competed a period of 30 months with leave to enter. They should make their application no more than 28 days before their leave is due to expire. They may be eligible to apply for settlement after completing 60 months (5 years) with leave as a partner.

3.2.11 Granting an extension of leave as a fiancé(e) or proposed civil partner

If paragraph E-LTRP.1.11 applies (extension as a fiancé(e) or proposed civil partner) the applicant will be granted leave to remain for a period not exceeding 6 months, subject to a condition of no recourse to public funds and to a prohibition on employment.

The applicant should be advised that they will be eligible to apply for leave to remain as a partner once the marriage or civil partnership has taken place.

Following the marriage or civil partnership and a subsequent successful application for leave as a partner on the five year route, they may be eligible to apply for settlement after completing 60 months (5 years) with leave as a partner: The 5 years will exclude any periods of entry clearance or limited leave as a fiancé or proposed civil partner.

http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/app-family-members/family-life-as-a-partner/

3.2.12 Initial grant of leave to remain as a partner where EX.1. is applied

Where an applicant is making an application to join the family route to settlement in the UK and they meet the requirements of R-LTRP.1.1.(a), (b) and (d) they will be granted leave to remain under D-LTRP.1.2 for 30 months on a 10 year route to settlement, 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 (see section 8 – Recourse to Public Funds).

The applicant should be advised that they may be eligible to make a charged application to apply for further leave to remain in this category no more than 28 days before the end of the initial 30 month leave is due to expire. They may be eligible to
apply for settlement after completing 120 months (10 years) with lawful continuous residence.

3.2.13 Refusal of leave to remain

Where the applicant does not meet the requirements for leave to remain as a partner the application should be refused under D-LTRP.1.3.

3.2.14 Refusal paragraphs

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

The refusal letter should state:

"You have applied for leave to remain in the United Kingdom as the [relationship] of [......]";

go on to state where the applicant has failed to meet the requirements of the Immigration Rules using (where possible) the following paragraphs and then state the following:

"For these reasons your application for leave to remain in the UK as a partner is refused under paragraph D-LTRP.1.3. Appendix FM of the Immigration Rules";

followed by standard closing paragraphs with reference to rights of appeal.

3.2.14a Suitability (Appendix FM: S-LTRP):

**Fails on basis of deportation order**

At the date of application you are/were the subject of a deportation order issued on [insert date of deport order] . You therefore fail to meet the requirements for leave to remain as a partner because paragraph S-LTR.1.2. of Appendix FM of the Immigration Rules applies.”

**Fails on basis of criminality**

Your presence in the UK is considered not to be conducive to the public good because on [insert date of conviction] you were convicted of [insert offence] where you were sentenced to a period of imprisonment of [insert length of sentence of at least 4 years]. You therefore fail to fulfil the requirement for leave to remain as a partner because paragraph S-LTR.1.3. of Appendix FM of the Immigration Rules applies.

(or)

Your presence in the UK is considered not to be conducive to the public good because on [insert date of conviction] you were convicted of [insert offence] where you were sentenced to a period of imprisonment of [insert length of sentence of less
than 4 years but at least 12 months]. You therefore fail to fulfil the requirement for leave to remain as a partner because paragraph S-LTR.1.4. of Appendix FM of the Immigration Rules applies.

(or)

Your presence in the UK is considered not to be conducive to the public good because on [insert date of conviction] you were convicted of [insert offence] where you were sentenced to a period of imprisonment of [insert penalty or length of imprisonment]. It is considered that your offending has caused serious harm. You therefore fail to fulfil the requirement for leave to remain as a partner because paragraph S-LTR.1.5. of Appendix FM of the Immigration Rules applies.

(or)

Your presence in the UK is considered not to be conducive to the public good because between [insert timescale of convictions] you were convicted of [insert number of offence(s)] which included [insert name of offence(s)]. You were sentenced to [insert penalty/ies or length(s) of imprisonment]. It is considered that the nature of your criminal activity/ies is such that you are a persistent offender who shows a particular disregard for the law. You therefore fail to fulfil the requirement for leave to remain as a partner because paragraph S-LTR.1.5. of Appendix FM of the Immigration Rules applies.

(or)

It is noted that [insert reasons why conduct / character/associations/other reasons make it undesirable to remain in the UK]. For these reasons the Secretary of State considers that your presence in the UK is undesirable and you therefore fail to meet the requirements for leave to remain as a partner because S-LTR.1.6. of Appendix FM of the Immigration Rules applies.

Fails on basis of non-compliance

You have failed to [attend an interview/provide information/ provide physical data/undergo a medical examination, or provide a medical report]. You have stated that [insert any reason given by the applicant for his non-compliance and reason why reason not accepted/ You have provided no reasonable excuse for your failure to comply with this requirement]. You therefore fail to meet the requirement for leave to remain as a partner because, without reasonable excuse, S-LTR.1.7. of Appendix FM of the Immigration Rules applies.

Fails on basis of false representations

[Insert nature of document or date of and nature of false representations or information] was submitted in support of your application. This/These [document/information/representations] is/are false [insert basis for assessing document/information is false]. I have considered whether you should nevertheless be granted entry clearance but have concluded that the exercise of discretion is not appropriate on this occasion because (insert reasons). You therefore fail to meet the
requirement for leave to remain as a partner because paragraph S-LTR.2.2. (a) of Appendix FM of the Immigration Rules applies.

Refused on basis of failure to disclose material facts

In your application, [you or another person] failed to disclose the following facts [state facts]. I am satisfied that these facts were material to the application because [state reasons]. I have considered whether you should nevertheless be granted leave but have concluded that the exercise of discretion is not appropriate on this occasion because (insert reasons). You therefore fail to meet the requirement for leave to remain as a partner because paragraph S-LTR.2.2. (b) of Appendix FM of the Immigration Rules applies.

Fails on basis of debts owing to NHS

The Secretary of State is satisfied that you have failed to pay an outstanding charge or charges with a total value of at least £1000 in respect of National Health Service (NHS) treatment that you have received. This is in accordance with the relevant NHS regulations on charges for overseas visitors, based on evidence received from [insert name of relevant NHS body]. [Insert reasons).

In light of this, the Secretary of State has deemed that refusal is appropriate and is not prepared to exercise discretion in your favour. You therefore fail to meet the requirement for leave to remain as a partner because S-LTR.2.3. of Appendix FM of the Immigration Rules applies.

Fails on basis lack of maintenance and accommodation undertaking

It is noted that no undertaking as to maintenance and accommodation, as was requested on date, has been received and S-LTR.2.4. of Appendix FM of the Immigration Rules therefore applies. I have given due consideration to whether you should nevertheless be granted leave but have concluded that the exercise of discretion is not appropriate on this occasion.

3.2.14b Eligibility (Appendix FM: E-LTRP)

Fails on basis of immigration status of partner

You state that your partner is [insert immigration status of partner]. To qualify for leave under section D-LTRP your partner must either be a British Citizen, present and settled in the UK and returning to the UK with you or being admitted at the same time for settlement or be in the UK with refugee leave or humanitarian protection. As your partner does not fulfil these requirements you fail to qualify for leave by virtue of E-LTRP.1.2. of Appendix FM of the Immigration Rules.

Fails on basis of age

You were under the age of 18 at the date of your application. You therefore fail to meet the requirement of paragraph E-LTRP.1.3. of Appendix FM of the Immigration Rules.
Your partner was under the age of 18 at the date of your application. You therefore fail to meet the requirement of paragraph E-LTRP.1.4 of Appendix FM of the Immigration Rules.

**Fails on basis of degree of relationship**

You are the [insert relationship to partner] of [insert name]. This relationship is within the prohibited degree of relationship as defined by [delete where applicable the Marriage Act 1949, the Marriage (Prohibited Degrees of Relationship) Act 1986 and Civil Partnership Act 2004]. You therefore fail to meet the requirement of paragraph E-LTRP.1.5 of Appendix FM of the Immigration Rules.

**Fails on requirement to have met in person**

It is considered that you and your partner have not met in person because [insert reason why it is not accepted that applicant and partner have met in person]. As it cannot be verified that you and your partner have met in person, you fail to meet the requirements of E-LTRP.1.6 of Appendix FM of the Immigration Rules.

**Fails on genuine and subsisting relationship**

It is not accepted that your relationship with your partner is genuine and subsisting. [Insert reasons why not accepted with reference to Guidance on determining Genuine Relationship]. You therefore fail to meet the requirements of E-LTRP.1.7 of Appendix FM of the Immigration Rules.

**Fails on basis of valid marriage or civil partnership**

You have not provided evidence that you and your partner are validly married / have entered into a valid civil partnership by providing evidence specified in Appendix FM-SE (or that the evidence provided is not accepted as valid evidence[provide reason for not accepting valid marriage/partnership]). You therefore fail to meet the requirements of E-LTRP.1.8 of Appendix FM of the Immigration Rules.

**Fails on basis of the break down of previous relationship and/or polygamy**

On [insert date of previous marriage/civil partnership] you were married to/entered into a civil partnership with [insert name of previous partner if appropriate]. You have not provided sufficient evidence that this marriage/civil partnership has been dissolved. There is no evidence that this is not a polygamous relationship that falls within paragraph 278(i) of the Immigration Rules. You therefore fail to meet the requirement of paragraph E-LTRP.1.9 of Appendix FM of the Immigration Rules.

**Fails on basis of intention to live together permanently in the UK**

It is not accepted that you and your partner intend to live together permanently in the UK because [insert reason why intention to live together permanently in the UK is not accepted]. You therefore fail to meet the requirements of E-LTRP.1.10 of Appendix FM of the Immigration Rules.
Fails on basis of that marriage/civil partnership has not taken place

You have been granted previous leave in the United Kingdom as a [fiancé(e) or proposed civil partner] on [insert date leave granted]. You have not undertaken the marriage or civil partnership during that period of leave.

You have stated that [insert explanation provided by applicant]. It is considered that [insert reason why explanation not accepted]. Or You have not provided evidence that the marriage or civil partnership will take place in the next 6 months. You therefore fail to fulfil E-LTRP.1.11. of Appendix FM of the Immigration Rules.

Fails on the basis that the current partner is not the same as at the last grant of leave as a partner

You have applied for leave to remain on the basis of your partner [name] who is not the same partner with whom you applied for your previous grant of leave. You therefore fail to fulfil E-ILRP.1.4. of Appendix FM of the Immigration Rules.

Fails where applicant is a visitor, has valid leave (unless as a fiancé(e) or proposed civil partner) of 6 months or less or on temporary admission or temporary release (in cases where EX.1 does NOT apply)

You are currently in the UK as [insert nature of immigration status]. In order to qualify for further leave as a partner under Appendix FM you must not be in the UK as [insert immigration status failure]. You therefore fail to fulfil E-LTRP.2.1. of Appendix FM of the Immigration Rules.

Fails where applicant is an overstayer (in cases where EX.1 does NOT apply)

It is noted that your previous leave as [insert previous leave] ended on [insert date previous ended]. You have been without valid leave in the United Kingdom in excess of 28 days. You therefore fail to fulfil E-LTRP.2.2. of Appendix FM of the Immigration Rules and paragraph EX.1. does not apply.

Fails where applicant does not meet the financial requirement (where EX.1. does not apply)

Note: When considering financial requirements for leave to remain as a partner the caseworker should refer to the Financial Requirement Guidance, which also contains specific refusal paragraphs:

http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/IDIs/chp8-annex/section-FM-1.7.pdf?view=Binary

The circumstances of your family require you to demonstrate that [you meet the financial requirement of [insert required levels of funds]] or [your partner is in receipt of one or more of the allowances or benefits listed in E-LTRP.3.3. (a)(i)-(v).

You have failed to demonstrate you are able to meet this level through the methods detailed from E-LTRP.3.1. to E-LTRP. 3.4. as;
[insert details why applicant fails to meet financial requirement using refusal paragraphs as set out in the financial requirement guidance - including where the applicant has failed to provide specified evidence under Appendix FM-SE paragraph 12].

You therefore fail to meet the requirements of E-LTRP.3.1. to E-LTRP. 3.4. of Appendix FM of the Immigration Rules.

**Fails on the basis that the applicant can be adequately maintained and accommodated without recourse to public funds where E-ECP.3.3. applies**

You meet the requirements of paragraph E-LTR.3.3(a) as your partner is in receipt of disability living allowance/severe disablement allowance/industrial injury disablement benefit/attendance allowance/carer’s allowance. In order to meet the requirements of these Rules you and your partner must also be able to maintain and accommodate yourselves and any dependants adequately in the UK without recourse to public funds. I am not satisfied that you and your partner are able to maintain and accommodate yourselves and any dependants adequately in the UK without recourse to public funds. You therefore fail to meet the requirement of paragraph E-LTR.3.3.(b)of Appendix FM of the Immigration Rules.

**Fails where applicant has not provided evidence that there will be adequate accommodation**

You are required to provide evidence that adequate accommodation, without recourse to public funds, will be available for your family. You have failed to provide this specified evidence / the specified evidence you have provided does not demonstrate that adequate accommodation without recourse to public funds will be available. You therefore fail to fulfil the requirements of [E-LTRP.3.3.(b)] or [E-LTRP. 3.4.].

**Fails on English language requirement (where EX1 does not apply)**

You have not provided evidence that you have achieved a qualification in English to level A1 of the Common European Framework of Reference for Languages. It is noted that none of the exceptions detailed in E-LTRP.4.1. to E-LTRP. 4.2. apply in your case. You therefore fail to fulfil E-LTRP.4.1. to E-LTRP. 4.2. of Appendix FM of the Immigration Rules.

**3.2.15 Curtailment of stay**

Where UKBA has been notified that a relationship has broken down during a period of limited leave as a partner, a person's stay in the UK may be curtailed where more than 60 days of their leave is remaining.

**3.3 INDEFINITE LEAVE TO REMAIN (SETTLEMENT) AS A PARTNER**

A consideration summary for a decision on an application for indefinite leave to remain as a partner can be found in Annex C of this guidance document.
The requirements to be met by a person seeking indefinite leave to remain as the partner of a British Citizen, a person settled in the UK, or a person in the UK with refugee leave or humanitarian protection are set out in Section R-ILRP, and must be referred to when reading the following guidance.

3.3.1 Requirements for indefinite leave to remain as a partner

Section R-ILRP.1.1. sets out the requirements to be met for indefinite leave to remain as a partner are that:

(a) the applicant and their 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- indefinite leave to remain;
(d) the applicant must meet all of the requirements of Section E-LTRP: Eligibility for leave to remain as a partner (but in applying paragraph ELTRP.3.1.(b)(ii) delete the words “2.5 times”); and
(e) the applicant must meet all of the requirements of Section E-ILRP: Eligibility for indefinite leave to remain as a partner.

3.3.2 Suitability requirements

In all applications for indefinite leave to remain as a partner the caseworker should consider whether suitability requirements S-ILR .1.1.-3.1. are met:

The criminality criteria set out in Appendix FM paragraphs S-ILR 1.2 – 1.7 must be met in all applications for indefinite leave to remain where the application was made on or after 13 December 2012.

If an application for indefinite leave to remain was made after 9 July but before 13 December 2012, the application should be considered against the rules in force at that time. This includes the requirement to have no unspent convictions.

http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/app-family-members/family-life-as-a-partner/

3.3.2a Criminality

In addressing suitability criteria caseworkers must refer to the criminality & general grounds for refusal guidance: Criminality guidance for Article 8 ECHR cases (found in Horizon, work tools and guides, asylum immigration & nationality, criminal casework guidance) and Modernised Guidance – criminality in settlement applications:

In order to meet the suitability requirement for indefinite leave to remain under S-ILR.1.5 the applicant must not have been sentenced to imprisonment for less than 12 months, unless 7 year has passed since the end of the sentence.

To meet the suitability requirement for indefinite leave to remain under S-ILR.1.6 the applicant must not have received a non-custodial sentence or other out of court disposal that is recorded on their criminal record within the 24 months preceding the date of application.

If the applicant cannot demonstrate they meet the requirements of S-ILR 1.5. or 1.6, they can only be granted limited leave to remain, provided they meet all other requirements, under D-ILR.1.2.

3.3.3 Eligibility requirements: Relationship

An applicant must meet all of the requirements of Section E-LTRP 1.2 to 4.2 (but in applying E-LTRP.3.1.(b)(ii) delete the words “2.5 times”) AND the applicant must meet all of the requirements of E-ILRP.1.2.- 1.6. Some of the eligibility requirements can be waived when EX.1 applies. See section 3.2.7 above.

http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/app-family-members/family-life-as-a-partner/

For further guidance on E-LTRP1.2. – “present and settled” – see section 3.1.2a. above.

For further guidance on E-LTRP.1.5. – “prohibited degree of relationship” – see section 3.1.2c. above.

For further guidance on E-LTRP.1.6. whether the applicant and their partner have met in person see section 3.1.2d(i) to (ii). above.

For further guidance on E-LTRP.1.7. and assessing whether the relationship between the applicant and their partner is genuine and subsisting see section 3.1.2e. above and refer to the Appendix FM Section FM 2.1 Genuine and Subsisting Relationships.

For further guidance on E-LTRP.1.8. assessing whether the marriage or civil partnership is valid see section 3.1.2f. above.

For further guidance on E-LTRP.1.9. whether any previous relationship of the applicant or their partner has broken down permanently, see section 3.1.2h. above.

For further information on E-LTRP.1.10. whether the applicant and their partner intend to live together permanently in the UK see section 3.1.2i. above.

For further information on E-LTRP.3.4. whether there will be adequate
accommodation, without recourse to public funds, which is not overcrowded or in contravention of public health regulations see section 3.1.3a above.

For further information on E-LTRP.4.1. English language requirements see section 3.1.4. above.

3.3.4 Eligibility requirements: Financial

An applicant must provide the specified evidence as defined in Appendix FM-SE paragraphs A1-21 that they meet the financial requirement as set out in Section E-ELTRP.3.1 to qualify for indefinite leave to remain as a partner:

http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/appendix-fmse/

For guidance on the financial requirement, caseworkers should refer to Financial Requirement IDI Section FM 1.7.

http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/IDIs/chp8-annex/section-FM-1.7.pdf?view=Binary

NOTE: Copies of all documentary evidence submitted in line with Appendix FM-SE should be retained on file, in chronological order.

3.3.5 Eligibility requirements: Knowledge of English language and about life in the UK

In order to meet eligibility for indefinite leave to remain under E-IRLP.1.6. the applicant must have sufficient knowledge of English language and sufficient knowledge of life in the UK in accordance with paragraphs 33B-G of the Rules:

http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/part1/

If the applicant cannot demonstrate they meet the requirements of 33B-G, they can only be granted limited leave to remain, provided they meet all other requirements, under E-ILR.1.2.

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

Note: Caseworkers should complete an assessment of suitability and eligibility criteria for indefinite leave to remain in the UK before and when addressing whether paragraph EX.1. applies.

3.3.6 Overstaying

See section 3.2.4a above.
3.3.7 Consideration of Section EX: Exception

For guidance on EX.1. see section 3.2.7 above.

3.3.8 Child’s best interest, Article 8 and Zambrano

See section 3.2.7a – b above.

3.3.9 Insurmountable obstacles and exceptional circumstances

See section 3.2.7c – 3.2.7d above.

3.3.10 Consideration of 276ADE Private life

For guidance on 276ADE see section 3.2.8 above.

3.3.11 Decision on indefinite leave to remain as a partner

If the applicant satisfies the requirements for indefinite leave to remain as a partner they should be granted indefinite leave to remain. If not, a period of 30 months limited leave to remain as an extension of their previous grant of leave, or if EX.1. applies on a 10 year family route to settlement in the UK as appropriate.

Where limited leave is granted following an indefinite leave application, applicants should be instructed they may be eligible to re-apply for indefinite leave to remain once they meet the requirements for indefinite leave to remain.

3.3.12 Grant of indefinite leave to remain as a partner (where EX.1. is not applied)

Where an applicant meets the requirements of R-ILRP.1.1. they will be granted indefinite leave to remain under D-ILTRP.1.1.

3.3.12a Grant of leave to remain as a partner following an application for indefinite leave to remain (where EX.1. is not applied)

If the applicant does not meet the requirements for indefinite leave to remain as a partner only for one of the suitability reasons in S-ILR.1.5 or S-ILR.1.6 and/or because they have not met the requirements of paragraphs 33B to 33G of the Rules, then in accordance with D-ILRP.1.2. the applicant will be granted further limited leave for a period not exceeding 30 months and subject to a condition of no recourse to public funds.

If the applicant has already completed 60 or 120 months with limited leave as a partner, he or she should be informed that, should the reason be overcome, they will be eligible to make a further charged application for indefinite leave to remain at any time within the 30 month period. They should make their next application no more than 28 days before their leave is due to expire.

3.3.12b Grant of leave to remain as a partner on the basis of family life following an application for indefinite leave to remain (where EX.1. is applied)
If the applicant does not meet the requirements for indefinite leave to remain or limited leave to remain as a partner and EX.1. applies, the applicant will be granted further limited leave for a period not exceeding 30 months under D-ILRP.1.3. on a 10 year route to settlement, and subject to a condition of no recourse to public funds.

The applicant should be advised they must complete 120 months with limited leave as a partner, before they will be eligible to make a further charged application for indefinite leave to remain. They should make their next application no more than 28 days before their leave is due to expire.

3.3.13 Refusal of indefinite leave to remain

If the applicant does not meet the requirements for indefinite leave to remain under D-IRLP.1.1. as a partner, or further leave to remain as a partner under paragraph D-ILRP.1.2. the application will be refused.

3.3.14 Refusal paragraphs

Note: The following wordings are examples - they do not constitute an exhaustive list of all possible refusal paragraphs.

The refusal letter should state:

"You have applied for leave to enter the United Kingdom as the [relationship] of [......]";

go on to state where the applicant has failed to meet the requirements of the Immigration Rules using (where possible) the following paragraphs and then state the following:

"For these reasons your application for indefinite leave to remain in the UK as a partner is refused under paragraph D-ILTRP.1.3. Appendix FM of the Immigration Rules";

followed by standard closing paragraphs with reference to rights of appeal.

3.3.14a Suitability (Appendix FM: S-ILR):

See paragraph 3.2.18(a) for refusal paragraphs on the basis of suitability. Ensure that you change the reference from leave to remain to indefinite leave to remain.

3.3.14b Eligibility (Appendix FM: E-LTRP and E-IRLP)

Fails on basis of immigration status of partner

You state that your partner is [insert immigration status of partner]. To qualify for leave under section D-ILRP your partner must either be a British Citizen, present and settled in the UK and returning to the UK with you or being admitted at the same time for settlement or be in the UK with refugee leave or humanitarian protection. As your partner does not fulfil these requirements you fail to qualify for leave by virtue of E-LTRP.1.2. of Appendix FM of the Immigration Rules.
Fails on basis of age

You were under the age of 18 at the date of your application. You therefore fail to meet the requirement of paragraph E-LTRP.1.3. of Appendix FM of the Immigration Rules.

Your partner was under the age of 18 at the date of your application. You therefore fail to meet the requirement of paragraph E-LTRP.1.4.of Appendix FM of the Immigration Rules.

Fails on basis of degree of relationship

You are the [insert relationship to partner] of [insert name]. This relationship is within the prohibited degree of relationship as defined by [delete where applicable the Marriage Act 1949, the Marriage (Prohibited Degrees of Relationship) Act 1986 and Civil Partnership Act 2004]. You therefore fail to fulfil the requirement of paragraph E-LTRP.1.5. and therefore fail to meet the requirement for indefinite leave to remain under D-ILRP.1.1 of Appendix FM of the Immigration Rules.

Fails on genuine and subsisting relationship

It is not accepted that your relationship with your partner is genuine and subsisting. [Insert reasons why not accepted with reference to Guidance on determining Genuine Relationship]. You therefore fail to meet the requirements of E-LTRP.1.7. of Appendix FM of the Immigration Rules which is a requirement to be fulfilled in order to be granted indefinite leave to remain as a partner under D-ILRP.1.1.

Fails on basis of valid marriage or civil partnership

You have not provided evidence that you and your partner are validly married / have entered into a valid civil partnership by providing evidence specified in Appendix FM-SE (or that the evidence provided is not accepted as valid evidence). You therefore fail to fulfil E-LTRP.1.8 of Appendix FM of the Immigration Rules which is a requirement to be fulfilled in order to be granted indefinite leave to remain as a partner under D-ILRP.1.1.

Fails on basis of having lived together or having the intention to live together permanently in the UK

It is not accepted that you and your partner have lived together and/or intend to live together in the UK [insert reason why evidence to have lived together and/or intention to live together permanently in the UK is not accepted]. You therefore fail to meet the requirement of E-LTRP.1.10. of Appendix FM of the Immigration Rules which is a requirement to be fulfilled in order to be granted indefinite leave to remain as a partner under D-ILRP.1.1.

Fails on the basis that the current partner is not the same as at the last grant of leave as a partner

You have applied for indefinite leave to remain on the basis of your partner [name] who
is not the same partner with whom you applied for your previous grant of leave. You therefore fail to meet the requirement of E-ILRP.1.4 of Appendix FM of the Immigration Rules which is a requirement to be fulfilled in order to be granted indefinite leave to remain as a partner under D-ILRP.1.1.

Fails where applicant is an overstayer (in cases where EX.1 does NOT apply)

It is noted that your previous leave as [insert previous leave] ended on [insert date previous ended]. You have been without valid leave in the United Kingdom in excess of 28 days. You therefore fail to meet the requirement of E-LTRP.2.2. of Appendix FM of the Immigration Rules which is a requirement to be fulfilled in order to be granted indefinite leave to remain as a partner under D-ILRP.1.1.

Fails where applicant does not meet the financial requirement (where EX.1. does not apply)

Note: When considering financial requirements for indefinite leave to remain as a partner the caseworker should refer to the Financial Requirement Guidance, which also contains specific refusal paragraphs:

http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/IDIs/chp8-annex/section-FM-1.7.pdf?view=Binary

The circumstances of your family in the United Kingdom require you to demonstrate that you meet the financial requirement of [insert required levels of funds]. You have failed to demonstrate you are able to meet this level through the methods detailed from E-LTRP.3.1. to E-LTRP. 3.3. as:

[insert details why applicant fails to meet financial requirement]

You therefore fail to meet the requirement of E-LTRP.3.1. to E-LTRP 3.3 of Appendix FM of the Immigration Rules which is a requirement to be fulfilled in order to be granted indefinite leave to remain as a partner under D-ILRP.1.1.

Fails on the basis that the applicant can be adequately maintained and accommodated without recourse to public funds where E-LTRP.3.3. applies

You meet the requirements of paragraph E-LTRP.3.3(a) as your partner is in receipt of disability living allowance/severe disablement allowance/industrial injury disablement benefit/attendance allowance/carer’s allowance. In order to meet the requirements of these Rules you and your partner must also be able to maintain and accommodate yourselves and any dependants adequately in the UK without recourse to public funds. I am not satisfied that you and your partner are able to maintain and accommodate yourselves and any dependants adequately in the UK without recourse to public funds. You therefore fail to meet the requirement of paragraph E-LTRP.3.3.(b) of Appendix FM of the Immigration Rules.

Fails where applicant has not provided evidence that there will be adequate accommodation
You are required to provide evidence that adequate accommodation, without recourse to public funds, will be available for your family. You have failed to provide this specified evidence / the specified evidence you have provided does not demonstrate that adequate accommodation without recourse to public funds will be available. You therefore fail to meet the requirement of E-LTRP. 3.4. which is a requirement to be fulfilled in order to be granted indefinite leave to remain as a partner under D-ILRP.1.1.

Fails on English language requirement (where EX1 does not apply)

You have not provided evidence that you have achieved a qualification in English to level A1 of the Common European Framework of Reference for Languages. It is noted that none of the exceptions detailed in E-LTRP.4.1. to E-LTRP. 4.2. apply in your case. You therefore fail to fulfil E-LTRP.4.1. to E-LTRP. 4.2. of Appendix FM of the Immigration Rules which is a requirement to be fulfilled in order to be granted indefinite leave to remain as a partner under D-ILRP.1.1.

3.3.15 Curtailment of stay

Where UKBA has been notified that a relationship has broken down during a period of limited leave as a partner, a person's stay in the UK may be curtailed where more than 60 days of their leave is remaining.

3.4 INDEFINITE LEAVE TO REMAIN AS A BEREAVED PARTNER

Section BPILR of Appendix FM makes provision for partners who are bereaved during the probationary period to be granted indefinite leave to remain in the UK, provided that the relationship was subsisting and that they intended to live together permanently in the UK at the time of the sponsor's death.

These Rules do not apply to persons admitted to the UK as the partner of a person who has only limited leave to enter or remain in the UK or who is a European Economic Area national exercising Treaty rights here.

The Rules relating to bereaved partners do not apply to fiancé(e)s and proposed civil partners.

3.4.1 Requirements for indefinite leave to remain as a partner

Section BPILR.1.1. sets out the requirements to be met for indefinite leave to remain as a bereaved partner. These are that:

(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-leave to remain; and
(d) the applicant must meet all of the requirements of Section E-BPILR: Eligibility for indefinite leave to remain as a bereaved partner.

3.4.2 Eligibility requirements
To meet the eligibility requirements for indefinite leave to remain as a bereaved partner all of the eligibility requirements in paragraphs E-B PILR.1.2. to E-B PILR.1.4. must be met.

For further guidance on “genuine and subsisting” see paragraph 3.1.2e. of this guidance above.

For further guidance on “intention to live together permanently in the UK” see paragraph 3.1.2i. of this guidance above.

It will not normally be appropriate to make detailed enquiries as to the subsistence of the marriage, civil partnership or relationship unless there are already doubts expressed on file.

In most cases, provided the eligibility requirements for indefinite leave to remain as a bereaved partner are met, it will be appropriate to grant indefinite leave to remain 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 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 is no longer in a position to prove the subsistence of the relationship.

The applicant must meet the criminality requirements of paragraphs S-ILR.1.5. and S-ILR.1.6. for indefinite leave to remain as a bereaved partner. Where the applicant is able to meet all requirements other than S-ILR1.5 or S-ILR.1.6. they can be considered for limited leave to remain.

Caseworkers should remember that bereaved applicants may be in some distress and any necessary enquiries should be made with care and tact.

3.4.3 Timeliness of applications

The Rules relating to bereaved partners are intended to benefit only those whose sponsor has died during the qualifying period of limited leave as a partner and who make their application whilst they still have limited leave to enter or remain in the UK.

The Rules should be applied equally to cases where the sponsor dies after an application for indefinite leave to remain has been submitted but before a decision has been reached.

The fact that a sponsor dies during the very early stages of the qualifying period is not to be considered as an adverse factor in reaching a decision. Where an applicant can meet the requirements of the Rules, the application is to be granted regardless of how much of the probationary period has been completed.
3.4.4 Out of time applications

Applicants for indefinite leave to remain as a bereaved partner do not need to comply with the requirement not to have overstayed by more than 28 days (set out at Section E-LTRP.2.2), provided that the circumstances of any period of overstaying relate to a period of bereavement and where compassionate circumstances therefore apply.

Applications made out of time **where all the other requirements of the Rules 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 has led the applicant to overlook the need to regularise their immigration status.

3.4.5 Granting indefinite leave to remain as a bereaved partner

If the applicant meets all of the requirements for indefinite leave to remain as a bereaved partner under B PILR.1.1, the applicant will be granted indefinite leave to remain under D-B PILRP.1.1.

If the applicant does not meet the requirements for indefinite leave to remain as a bereaved partner only because the time limit set in S-ILR.1.5, or S-ILR.1.6, has not passed at the date of application, the applicant will be granted further limited leave to remain for a period not exceeding 30 months under D-B PILR.1.2, and subject to a condition of no recourse to public funds.

The applicant should be informed that if granted a further period of limited leave on the basis of D-B PILR.1.2, they will be eligible to make a further charged application for indefinite leave to remain at any time within the 30 month period if the time limit has passed. Otherwise, they should make their next application no more than 28 days before their leave is due to expire.

Not all partners will wish to settle in the UK if their sponsor has died, preferring to return to their country of origin. In such cases an applicant may be granted further leave to remain for six months, subject to the same conditions, to give them time to sort out their affairs.

3.4.6 Refusing indefinite leave to remain as a bereaved partner

If the applicant does not meet the requirements for indefinite leave to remain or further leave to remain as a bereaved partner under D-B PILR.1.2, their application will be refused.

3.4.7 Refusal paragraphs

**Note:** The following wordings are examples - they do not constitute an exhaustive list of all possible refusal paragraphs.
The refusal letter should state:

“You have applied for indefinite leave to remain the United Kingdom as a bereaved partner of [......]’;

go on to state where the applicant has failed to meet the requirements of the Immigration Rules using (where possible) the following paragraphs and then state the following:

“For these reasons your application for indefinite leave to remain in the UK as a bereaved partner is refused under paragraph D-BPILR.1.3. Appendix FM of the Immigration Rules”;

followed by standard closing paragraphs with reference to rights of appeal.

3.4.7a In order to meet suitability for indefinite leave to remain as a bereaved partner the applicant must meet suitability for limited leave to remain (Appendix FM: S-LTRP):

See paragraph 3.2.18(a) for refusal paragraphs on the basis of suitability

3.4.7b In order to meet eligibility for indefinite leave to remain as a bereaved partner the applicant must meet all of the requirements of paragraph E-BPILR.1.2. to 1.4.

Fails on requirement for last grant of leave to have been as a partner or bereaved partner

Your last valid leave to remain in the United Kingdom was as [insert nature of last leave and date granted]. In order to qualify for settlement as a bereaved partner your last leave must have been as a partner or a bereaved partner of a British citizen or a person settled in the UK. You therefore fail to meet the requirement of E-BPILR.1.2. of Appendix FM of the Immigration Rules.

Or

Your last valid leave to remain in the United Kingdom was as a fiancé(e) or proposed civil partner. You therefore fail to meet the requirement E-BPILR.1.2. of Appendix FM of the Immigration Rules.

Fails on partner must have died

In order to qualify for indefinite leave to remain as a bereaved partner, the person who was your partner at the time of your last grant of leave of limited leave as a partner must have died. You have not demonstrated that your partner has died and you therefore fail to meet the requirement of E-BPILR.1.3.

Fails on lack of genuine and subsisting relationship

It is not accepted that your relationship with your partner at the time of their death was
genuine and subsisting [Insert reasons as to why doubted] and/or you have not
provided evidence that you and your partner intended to live together permanently in
the UK. You therefore fail to meet the requirement of E-BPILR.1.4. of Appendix FM of
the Immigration Rules.

4.0 ARTICLE 8 AND PARAGRAPH 353B

Guidance on paragraph 353B is available in Chapter 53 of the Enforcement
Instructions and Guidance and the Asylum Instruction on Discretionary Leave:

http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/enforcement/detentionandremovals/chapter53?view=Binary

Paragraph 353B provides for individuals to be granted leave where removal is no
longer appropriate. Where it is found that the prospects of removal are low,
caseworkers need to consider the amount of time the individual has spent in the UK
for a reason beyond their control, such as where there has been delay in determining
their case which is attributable to UKBA. The individuals also need to show that they
have been compliant and that negative factors relating to character, conduct or
associations do not apply. The exceptional circumstances in 353B are distinct from
Article 8 considerations.

Where an applicant qualifies under Family Rules they should be granted leave under
those Rules, even where they might also qualify under paragraph 353B.

5.0 ARTICLE 8 CLAIMS RAISED AT APPEAL

5.1 Appeals against refusal under the family and/or private life route

If an appeal is allowed on the basis that the appellant qualified for leave under the
relevant family or private life rules then leave should be granted under the relevant
rules.

If an appeal is allowed on the basis that even though the appellant does not qualify
under the relevant rules, there are exceptional circumstances that mean refusal or
removal would be a breach of Article 8, and where UKBA are not pursuing the case
further in court, the appellant should be granted leave to remain of 30 months. They will
be eligible to apply for settlement after 120 months if they qualify. For asylum cases
see Discretionary Leave guidance.

5.2 Appeals against refusal under any other route

Where an appellant raises Article 8 at appeal having made a charged application under
a route other than family or private life, caseworkers are not generally expected to
consider those applications under the family or private life rules prior to an appeal
hearing. Presenting Officers must consider whether to defend or concede the appeal.

Where an appeal against refusal of an application under the Points Based System has
been allowed on Article 8 grounds which relate to the initial application, for example a
refusal of a student application is held to be a breach of Article 8 because the student
would be unable to complete his course, the appellant should be granted leave of the same duration and on the same conditions as any applicant under the relevant PBS application.

Where an appeal is allowed because it is held that the appellant has family or private life which would make removal from the UK a breach of Article 8, for example because although the appellant does not meet the student rules they have a British partner and children and although they do not qualify under the rules there are exceptional circumstances which would make their removal a breach of Article 8, the appellant should be granted leave to remain for a period of 30 months. They will be eligible to apply for settlement after 120 months if they qualify.

5.3 Judicial Reviews

If a claimant wins their judicial review against a refusal of a grant of leave under the five year family route, they should be granted leave under the five year route.

If a claimant wins a judicial review against refusal of an application under the Points Based System on Article 8 grounds which relate to the initial application, for example a refusal of a student application is held to be a breach of Article 8 because the student would be unable to complete his course, the claimant should be granted leave of the same duration and on the same conditions as any applicant under the relevant PBS application.

Where a judicial review is won by a claimant because it is held that they have family or private life which would make removal from the UK a breach of Article 8, for example because although they do not meet the student rules they have a British partner and children and although they do not qualify under the rules there are exceptional circumstances which would make their removal a breach of Article 8, the claimant should be granted leave to remain of 30 months. They will be eligible to apply for settlement after 120 months if they qualify.

6.0 ARTICLE 8 CLAIMS AND ASYLUM/ HUMANITARIAN PROTECTION CLAIMS

Where a person has made a claim for asylum or humanitarian protection, paragraph 326B and A276C, subject to paragraphs A277- A280 and GEN.1.9. of the rules provides that any Article 8 claim will be considered in line with the 10-year partner or parent routes in Appendix FM (family life) and paragraphs 276ADE to 276DH (private life) of the Rules.

The asylum caseworker should undertake the following consideration:

- Consider asylum and humanitarian protection claim and where case falls for refusal, consider the applicants right to respect for Family life by engaging paragraph 326B and/or A276C of the Immigration Rules.
- Consider whether the applicants meets the requirement of paragraph R-LTRP.1.1.(a)and (d) of Appendix FM.
- Where these requirements are met, then the caseworker may grant a period of leave of no more than 30 months limited leave to remain under D-LTRP.1.2. or D-LTRPT.1.2.
If EX.1. does not apply, the caseworker should consider whether the applicant meets the requirements for limited leave to remain on the basis of the right to respect for private life under paragraph 276ADE and grant leave if appropriate (see guidance on private life in paragraph 3.2.8 above).

The applicant may then be eligible to apply for settlement after 120 months of limited leave. Leave should be subject to a condition of no recourse to public funds unless the applicant can evidence destitution (see section 8.0 on recourse to public funds).

If the Article 8 claim is refused, the caseworker should refuse limited leave under D-LTRP.1.3. or D-LTRPT.1.3. and/or 276CE.

The reasons for refusal must explain why the requirements of the Family and/or private life Rules have not been met with an explanation that consideration has been given to whether there are any exceptional circumstances that would make removal a breach of Article 8.

Where a migrant has previously had an asylum claim refused, any Article 8 claim received as part of a further submission in person must be considered in accordance with the procedure under paragraph 353 of the rules and under the relevant family and private life rules.

Where asylum, humanitarian protection and consideration under the family and private life rules falls for refusal caseworkers must go on to consider, separately whether a grant of discretionary leave may be appropriate in accordance with the instruction on ‘Discretionary Leave’.

From 9 July 2012 discretionary leave should not be granted for family or private life reasons.

6.0a Refusal Paragraphs

Note: The following wordings are examples - they do not constitute an exhaustive list of all possible refusal paragraphs.

In addition to the standard refusal wordings for the asylum / HP claim, the refusal letter should also state:

"Article 8 (2) provides that it can be lawful to interfere with the exercise of the right to respect for family and/or private life where it is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Consideration has been given to your claim that your removal from the UK would breach your right to respect for family and private life under Article 8 of the European Convention on Human Rights. Your application to remain in the United Kingdom has been determined in accordance with Appendix FM and/or 276ADE of the Immigration Rules by virtue of paragraph 326B and/or A2776C.");

go on to state why the applicant has failed to meet the requirements of the Immigration Rules e.g. because they fail suitability requirements, eligibility requirements or EX.1. does not apply; or go on to state where the applicant has failed to meet the requirements of the Immigration Rules and then state the following:
“For these reasons your claim on the right to leave to remain in the UK on the basis of article 8 is refused under paragraph D-LTRP.1.3. or D-LTRPT.1.3 of Appendix FM and/or 276CE of the Immigration Rules.”;

followed by standard closing paragraphs with reference to any relevant rights of appeal.

7.0 ARTICLE 8 CLAIMS MADE WHEN REMOVAL PENDING

Where the migrant is in immigration detention pending removal, where further submissions are made with regard to the right to respect for family and/or private life then Article 8 claim should be considered in line with Appendix FM, EX.1. and/or 276ADE subject to paragraph Gen.1.9. (which sets out that an application is not required) to ensure that it is not necessary to postpone removal in the event that the claim is refused. The claim should be considered under the relevant family and private life rules under paragraph 400. This exception also applies where removal directions (IS.151D) are set pending an imminent removal, but the migrant has not been detained.

The caseworker should follow the same consideration as set out in paragraph 6.0 above. If the claimant qualifies under the rules they should be granted leave to remain of 30 months. They will be eligible to apply for settlement after 120 months if they qualify.

If the requirements of Appendix FM and EX.1. and/or 276ADE are not met, the claim of a breach of Article 8 should be refused in line with paragraph 6.0 above.

8.0 RECOURSE TO PUBLIC FUNDS

Those seeking to establish their family life in the UK cannot expect to do so if this will increase burdens on the taxpayer. The changes to the Immigration Rules implemented on 9 July 2012 are predicated in part on safeguarding the economic well-being of the UK, which is a legitimate aim under Article 8 of the ECHR (the right to respect for private and family life) for which rational and proportionate interference in Article 8 rights can be justified.

Under Appendix FM, limited leave:

- Under the 5 year partner or parent routes;
- As a bereaved partner;
- As a fiancé(e) or proposed civil partner,

will be granted subject to a condition of no recourse to public funds.

In:

- All other cases in which limited leave is granted as a partner or parent under Appendix FM;
- All cases in which limited leave on the grounds of private life is granted under paragraph 276BE or paragraph 276DG; and
All cases in which limited leave is granted outside the rules on the grounds of family or private life, leave will be granted 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. Exceptional circumstances which require access to public funds to be granted will exist only where the applicant is destitute.

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

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

Where an applicant is supported under section 95 or section 4 of the Immigration and Asylum Act 1999 they will already have been assessed as destitute. The decision maker should therefore normally grant access to public funds (condition code 1A) when granting leave under the partner or parent route in Appendix FM or the private life route in paragraphs 276ADE to 276DH of the Immigration Rules, unless it is clear that there has been a change in their financial circumstances since the last assessment of destitution which would affect their eligibility for support. Caseworkers should take the same approach where the applicant and any family is receiving support from a Local Authority under section 17 of the Children Act 1989 or section 21 of the National Assistance Act 1948, as the Local Authority will have conducted their own assessment of destitution before making a decision to grant support.

In all other cases the onus is on the applicant to evidence their destitution on the basis of the information set out in their application and any supplementary information about their circumstances which they provide in support of their application. Applicants who have previously been supported under section 95 or section 4 (or by a Local Authority) may be able to show that they are destitute, but will need to provide evidence of their financial position and accommodation arrangements since their support was discontinued.

In considering whether an applicant is destitute, the caseworker will have in mind that:

- Those granted limited leave under Appendix FM as a partner or parent, or under paragraph 276BE or paragraph 276DG on the grounds of private life, will be free to work in the UK.

- Where the applicant is granted limited leave as a partner, their partner is expected to support them and, if their partner is a British citizen or settled in the UK, that person will have access to any public funds to which their circumstances qualify them. It should therefore be extremely rare for the applicant to be destitute.
Where the applicant is granted limited leave on the grounds of private life, they will generally have lived in the UK for a significant period. To show that they are destitute the applicant will have to demonstrate why their previous means of support are no longer available to them.

An applicant claiming to be destitute will need to provide evidence, including of their financial position, demonstrating that they do not have access to adequate accommodation or any means of obtaining it (other than from a Local Authority or charity) or they cannot meet their other essential living needs (other than from a Local Authority or charity).

Where a decision maker accepts that the applicant is destitute they should grant access to public funds (condition code 1A) when granting leave under the partner or parent route in Appendix FM or the private life route in paragraphs 276ADE to 276DH of the Immigration Rules. A destitute applicant granted access to public funds will still have to meet the relevant eligibility criteria for any welfare benefit for which they apply.

When an applicant who was granted access to public funds at the initial grant of leave applies for further leave to remain, they will be re-assessed and only granted further leave with recourse to public funds if they continue to be destitute.

End.
Annex A. Consideration Summary – Partners

Family Life as a Partner – Entry Clearance:

Consider general provision Gen.1.1. to Gen.1.9.

Consider requirements for entry clearance as a partner: Section EC-P:

EC-P.1.1.(a) - the applicant must be outside the UK
EC-P.1.1.(b) - the applicant must have made a valid application for entry clearance as a partner
EC-P.1.1.(c) - the applicant must not fall for refusal under any of the grounds in Section S-EC; Suitability – entry clearance; and
EC-P.1.1.(d) - the applicant must meet all of the requirements of Section E-ECP; Suitability – entry clearance.

Consider suitability requirements for entry clearance as a partner: Section E-EC:

S-EC.1.1. The applicant will be refused entry clearance on grounds of suitability if any of paragraphs S-EC.1.2. to 1.7. apply.

S-EC.2.1. The applicant will normally be refused entry clearance on grounds of suitability if any of paragraphs S-EC.2.2. to 2.5. apply.

Consider eligibility requirements for entry clearance: Section E-ECP:

E-ECP.1.1. To meet the eligibility requirements for entry clearance as a partner all of the requirements in paragraphs E-ECP.2.1. to 4.2. must be met.

Decide Application: D-ECP:

Grant: If the applicant meets the requirements for entry clearance as a partner the applicant will be granted entry clearance for an initial period not exceeding 33 months, and subject to a condition of no recourse to public funds; or where the applicant is a fiancé(e) or proposed civil partner, the applicant will be granted a period not exceeding 6 months, and subject to a condition of no recourse to public funds and a prohibition on employment under D-ECP.1.1.

Otherwise - Refuse: Where the applicant does not meet the requirements for entry clearance as a partner the applicant will be refused under D-ECP.1.2.
Annex B. Consideration Summary – Partners

Family Life as a Partner – Leave to Remain:

Consider general provision Gen.1.1. to Gen.1.9.

Consider requirements for limited leave to remain as a partner: Section R-LTRP:

R-LTRP.1.1.(a) - the applicant and partner must be in the UK
R-LTRP.1.1.(b) - the applicant must have made a valid application for limited or indefinite leave to remain as a partner; and either
R-LTRP.1.1.(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 leave to remain as a partner; or

R-LTRP.1.1.(d) - (i) the applicant must not fall for refusal under section S-LTR: Suitability leave to remain; and
- (ii) the applicant meets the requirements of paragraphs E-LTRP.1.2.-1.12. and E-LTRP.2.1.; and
- (iii) paragraph EX.1. applies.

Consider suitability requirements for limited leave to remain as a partner: Section S-LTR:

S-LTR.1.1. The applicant will be refused limited leave to remain on grounds of suitability if any of paragraphs S-LTR.1.2. to 1.7. apply.

S-LTR.2.1. The applicant will normally be refused limited leave to remain on grounds of suitability if any of paragraphs S-LTR.2.2. to 2.4. apply.

Consider eligibility requirements for limited leave to remain: Section E-LTRP:

E-LTRP.1.1. To qualify for limited leave to remain as a partner all of the requirements in paragraphs E-LTRP.1.2. to 4.2. must be met.

Where requirements are met and there needs to be no consideration of exceptions under EX.1. Decide Application: D-LTRP:

Grant: If the applicant meets the requirements in paragraph R-LTRP.1.1.(a) to (c) for limited leave to remain as a partner the applicant will be granted 30 months under D-LTRP1.1. and subject to a condition of no recourse to public funds; and they will be eligible to apply for settlement after a continuous period of at least 60 months with such leave or in the UK with entry clearance as a partner under paragraph D-ECP1.1. (excluding in all cases any period of entry clearance or limited leave as a fiancé(e) or proposed civil partner); or, if paragraph E-LTRP.1.11. applies, the applicant will be granted limited leave for a period not exceeding 6 months and subject to a condition of no recourse to public funds and a prohibition on
Where EX.1. applies:

EX.1. – (a) (i) The applicant has a genuine & subsisting parental relationship with a child who:

(aa) is under 18, or was under the age of 18 years when the applicant was first granted leave on the basis that this paragraph applied;

(bb) is in the UK

(cc) is a Brit cit or has lived continuously in the UK for at least 7 years immediately preceding the date of application; and

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

(b) there is a genuine & subsisting relationship with a partner in the UK who is a Brit cit, settled or in the UK with refugee leave or HP; and there are insurmountable obstacles to family life continuing outside the UK

Where requirements are met for limited leave to remain as a partner and EX.1. applies decide application: D-LTRP:

Grant: If the applicant meets the requirements in paragraph R-LTRP.1.1.(a), (b) and (d) for limited leave to remain as a partner the applicant will be granted 30 months under D-LTRP.1.2. and subject to a condition of no recourse to public funds unless the Secretary of State deems such recourse to be appropriate; and they will be eligible to apply for settlement after a continuous period of at least 120 months with such leave, with limited leave as a partner under D-LTRP.1.1. or in the UK with entry clearance as a partner under D-ECP.1.1. (excluding in all cases any period of entry clearance or limited leave as a fiancé(e) or proposed civil partner), or, if paragraph E-LTRP.1.11. applies, the applicant will be granted limited leave for a period not exceeding 6 months and subject to a condition of no recourse to public funds and a prohibition on employment.

Where requirements are not met for limited leave to remain as a partner, consider private life 276ADE:

The requirements to be met by an applicant for leave to remain on the grounds of private life in the UK are that at the date of application, the applicant:

(i) does not fall for refusal under any of the grounds in Section S-LTR 1.2 to S-LTR 2.3. and S-LTR.3.1. in Appendix FM; and

(ii) DELETED.

(iii) has lived continuously in the UK for at least 20 years (discounting any period of imprisonment); or

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

(v) is aged 18 years or above and under 25 years and has spent at least half of his life living continuously in the UK (discounting any period of imprisonment); or

(vi) is aged 18 years or above, has lived continuously in the UK for less than 20
years (discounting any period of imprisonment) but has no ties (including social, cultural or family) with the country to which he would have to go if required to leave the UK.

Grant: Where applicant meets the requirements for limited leave on the basis of private life under 276ADE the caseworker can grant 30 months limited leave to remain under 276BE and subject to a condition of no recourse to public funds; and they will be eligible to apply for settlement after a continuous period of at least 120 months with such leave, with limited leave as a partner under D-LTRP.1.1. or in the UK with entry clearance as a partner under D-ECP.1.1. (excluding in all cases any period of entry clearance or limited leave as a fiancé(e) or proposed civil partner).

Otherwise: Decide Application: D-LTRP:
Refuse: Where the applicant does not meet the requirements for entry clearance as a partner the applicant will be refused under D-LTRP.1.3. Caseworkers should refuse application with reference to all relevant requirements.
Annex C. Consideration Summary – Partners

Family Life as a Partner – Indefinite Leave to Remain:
Consider general provision Gen.1.1. to Gen.1.9.

Consider requirements for indefinite leave to remain as a partner: Section R-ILRP:

- the applicant and partner must be in the UK
- the applicant must have made a valid application for indefinite leave to remain as a partner; and either
- the applicant must not fall for refusal under Section S-ILR: Suitability leave to remain;
- the applicant must meet all of the requirements of Section E-LTRP: Eligibility for leave to remain as a partner (but in applying paragraph E-LTRP.3.1.(b)(ii) delete the words “2.5 times”); and
- the applicant must meet all of the requirements of section E-ILRP: Eligibility for indefinite leave to remain as a partner.

Consider suitability requirements for indefinite leave to remain: Section S-ILRP:

The applicant will be refused indefinite leave to remain on grounds of suitability if any of paragraphs S-ILR.1.2. to 1.9 apply.

The applicant will normally be refused on grounds of suitability if any of paragraphs S-ILR.2.2 to 2.4. apply.

Consider eligibility requirements for indefinite leave to remain: Section E-ILRP:

To meet the eligibility requirements for indefinite leave to remain as a partner all of the requirements of paragraphs E-ILRP.1.2. to 1.6. must be met.

Where requirements are met and there needs to be no consideration of exceptions under EX.1. Decide Application: D-ILRP:

Where the applicant meets all of the requirements for indefinite leave to remain as a partner the applicant will be granted indefinite leave to remain under D-ILRP.1.1.

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) paragraph S-ILR.1.5. or 1.6. applies;
(b) the applicant has not met the requirements of paragraphs 33B to 33G of the Rules,

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 under D-ILRP.1.2.
Where EX.1. applies:

EX.1. – (a) (i) The applicant has a genuine & subsisting parental relationship with a child who:
   (aa) is under 18, or was under the age of 18 when the applicant was first granted leave on the basis that this paragraph applied;
   (bb) is in the UK;
   (cc) is a Brit cit or has lived continuously in the UK for at least 7 years immediately preceding the date of application; **and**
   (ii) it would not be reasonable to expect the child to leave the UK; or

(b) there is a genuine & subsisting relationship with a partner in the UK who is a Brit cit, settled or in the UK with refugee leave or HP; **and** there are insurmountable obstacles to family life continuing outside the UK

Where requirements are met for indefinite leave to remain as a partner and EX.1. applies decide application: D-ILRP:

**Grant:** If the applicant meets the requirements in paragraph R-LTRP.1.1.(a), (b) and (d) for limited leave to remain as a partner the applicant will be granted 30 months under D-ILRP.1.2. and subject to a condition of no recourse to public funds unless the Secretary of State deems such recourse to be appropriate; and they will be eligible to apply for settlement after a continuous period of at least 120 months with such leave, with limited leave as a partner under D-LTRP.1.1. or in the UK with entry clearance as a partner under D-ECP.1.1. (excluding in all cases any period of entry clearance or limited leave as a fiancée(e) or proposed civil partner).

Where requirements are not met for indefinite leave to remain as a partner, consider private life 276ADE:

The requirements to be met for the grant of indefinite leave to remain on the grounds of private life in the UK are that:

(a) the applicant has been in the UK with continuous leave on the grounds of private life for a period of at least 120 months. This continuous leave will disregard any period of overstaying between periods of leave on the grounds of private life where the application was made no later than 28 days after the expiry of the previous leave. Any period pending the determination of the application will also be disregarded;;

(b) the applicant meets the requirements of paragraph 276ADE;

(c) does not fall for refusal under any of the grounds in Section S-ILR: Suitability-

indefinite leave to remain in Appendix FM;

(d) the applicant has sufficient knowledge of the English language and sufficient knowledge about life in the UK unless the applicant is under the age of 18 or aged 65 or over at the time the applicant makes the application; and

(e) there are no reasons why it would be undesirable to grant the applicant indefinite leave to remain based on the applicant's conduct, character or associations or because the applicant represents a threat to national security.

**Grant:** Where the applicant meets the requirements for Indefinite leave to remain on
the grounds of private life under 276DE the caseworker can grant indefinite leave to remain under 276DF.

If the applicant does not meet the requirements for indefinite leave to remain on the grounds of private life in the UK only for one or both of the following reasons-

(a) paragraph S-ILR.1.5. or S-ILR.1.6 in Appendix FM applies;
(b) the applicant has not met the requirements of paragraphs 33B to 33G of these Rules,

the applicant may be granted further limited leave to remain on the grounds of private life in the UK for a period not exceeding 30 months, and subject to such conditions as the Secretary of State deems appropriate under 276DG.

↓

Otherwise: Decide Application: D-ILTRP:

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Refuse: Where the applicant does not meet the requirements for indefinite leave to remain as a partner or further limited leave to remain as a partner under paragraph DILRP. 1.2., the application will be refused under D-ILTRP.1.3. Caseworkers should refuse application with reference to all relevant requirements.

End.