

SECTION CONTENTS

**CHAPTER 8 - FAMILY MEMBERS
SECTION 1- SPOUSES**

- 1. INTRODUCTION**
 - 1.1. Application of this instruction in respect of children and those with children**
- 2. LEAVE TO ENTER AS A SPOUSE OF A PERSON PRESENT AND SETTLED IN THE UNITED KINGDOM**
 - 2.1. Interpretation of "present and settled"**
 - 2.2. Interpretation of "intention to live permanently with the other"**
 - 2.3. Key points**
 - 2.4. Further guidance**
 - 2.5. Granting leave to enter**
 - 2.6. Statistical Codes**
 - 2.7. Refusal of leave to enter**
 - 2.8. On entry refusal codes**
 - 2.9. Right of appeal and corresponding refusal form**
- 3. LEAVE TO REMAIN AS A SPOUSE OF A PERSON PRESENT AND SETTLED IN THE UNITED KINGDOM**
 - 3.1. Key points**
 - 3.2. Making further enquiries**
 - 3.3. Further guidance**
 - 3.4. Interviews/Home visits**
 - 3.5. Maintenance and accommodation**
 - 3.6. Granting leave to remain**

- 3.7. **Statistical Codes**
- 3.8. **Refusal of leave to remain**
- 3.9. **Curtailment of stay**
- 3.10. **Statistical Codes**
- 4. SETTLEMENT**
 - 4.1. **Key points**
 - 4.2. **Applications for indefinite leave to remain at the end of the probationary period**
 - 4.3. **Delayed travel on Entry Clearances conferring leave to enter**
 - 4.4. **Interviews**
 - 4.5. **Absences from UK during probationary period**
 - 4.6. **Maintenance and accommodation**
 - 4.7. **Unmarried partners who have since married**
 - 4.8. **Granting settlement**
 - 4.9. **Statistical Codes**
 - 4.10. **Refusal of settlement**
 - 4.11. **Statistical Codes**
- 5. BEREAVED SPOUSES**
 - 5.1. **Key Points**
 - 5.2. **Doubtful cases**
 - 5.3. **Further Guidance**
 - 5.4. **Refusals**
 - 5.5. **Statistical Codes**
 - 5.6. **Timeliness of applications**
 - 5.7. **Out of time applications**
- 6. VICTIMS OF DOMESTIC VIOLENCE**

- 7. SPOUSES OF MEMBERS OF HM FORCES, PERMANENT MEMBERS OF HM DIPLOMATIC SERVICE, COMPARABLE UK-BASED STAFF MEMBERS OF THE BRITISH COUNCIL ON A TOUR OF DUTY OVERSEAS, OR STAFF MEMBERS OF THE BRITISH COUNCIL ON A TOUR OF DUTY OVERSEAS, OR STAFF MEMBERS OF THE DEPARTMENT FOR INTERNATIONAL DEVELOPMENT WHO ARE BRITISH CITIZENS OR UK SETTLED**
 - 7.1. Granting leave to enter and settlement**
 - 7.2. Further guidance**
 - 7.3. Consideration of settlement applications**
 - 7.4. Further guidance**
 - 7.5. Refusing a settlement application**
 - 7.6. Unmarried partners**
- 8. OTHER CASES**
 - 8.1. Granting a further 12 months**

**CHAPTER 8 - FAMILY MEMBERS
SECTION 1****SPOUSES****1. INTRODUCTION**

Under the Immigration Rules overseas nationals may seek leave to enter or remain in the United Kingdom with a view to settlement as the spouse of a person present and settled here. Paragraphs 281-289 of HC 395 as amended set out the provisions for leave to enter or remain for persons in this category. It should be noted that, in addition, paragraphs 277 - 280 in Part 8 of HC395 set out specific provisions relating to child spouses and polygamous marriages (see **Annexes B** and **C** below).

Paragraph 277 of HC 395 as amended by HC1113 provides that nothing in the Rules shall be construed as permitting a person to be granted entry clearance, leave to enter, leave to remain or variation of leave as a spouse if the applicant or the sponsor will be aged under 21 on the date of arrival in the United Kingdom or (as the case may be) on the date on which the leave to remain or variation of leave would be granted.

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

Section 55 of the Borders, Citizenship and Immigration Act 2009 requires the UK Border Agency to carry out its existing functions in a way that takes into account the need to safeguard and promote the welfare of children in the UK. It does not impose any new functions, or override existing functions.

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

Our statutory duty to children includes the need to demonstrate:

- Fair treatment which meets the same standard a British child would receive;
- The child's interests being made a primary, although not the only consideration;
- No discrimination of any kind;
- Asylum applications are dealt with in a timely fashion;
- Identification of those that might be at risk from harm.

2. LEAVE TO ENTER AS A SPOUSE OF A PERSON PRESENT AND SETTLED IN THE UNITED KINGDOM

The requirements to be met by a person seeking leave to enter as a spouse of a person present and settled in the United Kingdom or being admitted on the same occasion for settlement are set out in paragraph 281 of HC 395 and **must** be referred to when reading the following advice.

2.1. Interpretation of "present and settled"

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

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

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

2.3. Key points

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

- the passenger holds a valid entry clearance endorsed "Husband" or "Wife/WYR"; and
- there is no reason to believe that false representations were made in order to obtain the entry clearance or that circumstances have changed since its issue.

2.4. Further guidance

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

ANNEX A provides guidance relating to doubtful cases.

2.5. Granting leave to enter

All passengers who have an entry clearance endorsed "Husband" or "Wife/WYR" should be granted leave to enter for a period not exceeding 27 months on Code 1 and advised that, provided the marriage is still subsisting, they should apply to the UK Border Agency for indefinite leave to remain ***not earlier than 28 days*** before their leave is due to expire.

Only spouses who have completed a period of 4 years as the husband/wife of a person who has a right of abode in the United Kingdom or indefinite leave to enter or remain in

the United Kingdom and who is on the same occasion seeking admission to the United Kingdom for the purposes of settlement, having lived together abroad with their spouse throughout that 4 year period, should be issued with an entry clearance endorsed "settlement". These endorsements are rare.

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

2.6. Statistical Codes

H Husband - probationary 27 months

WYR Wife - probationary 27 months

SH Husband - given ILE accompanying or joining wife

SW Wife - given ILE accompanying or joining husband

2.7. Refusal of leave to enter

- Where a **non-visa national** seeks entry in this capacity without a valid United Kingdom entry clearance issued for this purpose and no compassionate circumstances exist, s/he should be refused entry under paragraph 283 of HC 395.
- A **visa national** seeking entry without a valid United Kingdom visa falls to be refused under paragraph 320(5). See **Chapter 9, Section 2** to these instructions.
- Where a passenger seeking entry in this capacity holds an entry clearance for this purpose, refusal may only be considered under paragraph 321 (see **Chapter 9, Section 3** to these instructions).
- In the case of a person returning to the United Kingdom from a temporary absence abroad, within a period for which s/he was previously given leave, reference **must** be made, before refusal, to **Chapter 1, Section 9, "Persons returning to resume previous leave"**.

ANNEX G provides examples of refusal formulae.

2.8. On entry refusal codes

- E4 Lack of required non-settlement entry clearance, including those set aside on grounds of misrepresentation, forgery, failure to disclose material facts or where a change of circumstances has removed the basis of claim to admission
- F1 For settlement without required entry clearance, including holder of forged entry clearance, entry clearance obtained by deception, or entry clearance where a change in circumstances has removed basis of claim to admission
- Z1 Other reasons

2.9. Right of appeal and corresponding refusal form

See chapter 12 for details on appeal rights.

3. LEAVE TO REMAIN AS A SPOUSE OF A PERSON PRESENT AND SETTLED IN THE UNITED KINGDOM

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

3.1. Key points

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

- the applicant has limited leave to remain in the United Kingdom in accordance with the Immigration Rules, other than limited leave to enter for 6 months or less (unless the leave in question is limited leave to enter as a fiancé(e), or unless that leave was granted to the applicant as the spouse or unmarried partner of a Tier 1 Migrant, and that partner is the same person in relation to whom the applicant is applying for an extension of stay under paragraph 284 HC 395); and
- the applicant has contracted a valid marriage, which is recognised in this country, to a person who is present and settled here; and
- the marriage is subsisting and that the couple intend living together permanently as husband and wife.

The "no switching" into marriage provision prevents those given limited leave to enter the United Kingdom for 6 months or less, e.g. visitors and short term students, from switching into the marriage category. It does not apply to those given leave to enter the United Kingdom for 6 months as a fiancé(e). Neither does it apply to those who have been granted an extension of stay in the United Kingdom of six months or less at the end of their initial period of leave.

On 1 October 2004, Command Paper 6339 introduced a requirement preventing switching into the marriage category by a person who only has leave which was granted outside the Immigration Rules. Grants of discretionary leave are outside the Immigration Rules. Therefore those persons granted discretionary leave who apply on or after 1 October 2004 on the basis of a marriage, or the establishment of a partnership with someone present and settled here, cannot seek to switch into leave to remain on the basis of that relationship. Provided the relationship continues to exist they can seek to remain in the UK until they have completed 6 years' discretionary leave (in 2 periods of 3 years' stay) and then apply for settlement. Or, at a time of their choosing, they can leave the United Kingdom and apply for entry clearance from abroad.

Where an application is made out-of-time or is submitted by an illegal entrant, refer to local instructions for advice.

3.2. Making further enquiries

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

- there is real reason to doubt from the evidence to hand that the marriage is not regarded as valid in the UK (see ***Annex B, Recognition of Marriage etc***);
- there is an allegation or other information suggesting that the marriage may not be genuine, that the marriage is a forced marriage or the couple are not living together;
- having been admitted as a fiancé, the applicant has married someone else;

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

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

3.3. Further guidance

In some cultures it is not the practice for a husband and wife to live together until a religious ceremony has taken place (even if they have been through a valid civil ceremony). Receipt of a religious and civil marriage certificate may, ***where there is no evidence to the contrary***, be taken as sufficient evidence of the intention of the couple to live together.

It should be noted that where a couple undergo a religious marriage in a building registered by law for the purpose of marriage they are not required to undergo a separate civil ceremony. Where this is the case the couple will be issued with the normal green style marriage certificate as well as a religious certificate. See ANNEX B.

Where a religious marriage certificate has not been submitted, caseworkers may, if there is reason to believe that the couple are not living together, request sight of one. In some cases, however, the couple may claim to have gone through a religious ceremony ***without*** the issue of a religious marriage certificate. Such a couple should be asked to provide a statement confirming that they are living together as husband and wife, together with other evidence, such as wedding invitations etc; showing that a religious ceremony has taken place.

3.4. Interviews/Home visits

When deciding whether an office interview or a home visit is justified, it is important to

have clearly in focus what further information is required **and** how that information would be relevant to resolving the application. Caseworkers should consider an interview in the following circumstances:

- where a marriage of convenience was suspected previously but there was insufficient evidence to justify refusal at that stage;
- where the applicant had previously been refused leave to enter or remain;
- where the applicant has married, within a short space of time, a person with whom he had no substantial prior acquaintance;
- where information has come to light that the couple are no longer living together;
- where the only evidence of the subsisting marriage comes from the applicant seeking settlement.
- Where a Section 24 (S24) report has been submitted by the Registrar.

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

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

3.5. Maintenance and accommodation

Maintenance and accommodation requirements are set out in the Rules. Applicants will provide information on these requirements when completing the application form. The whole application should be assessed according to the Rules and refusal on maintenance and accommodation grounds alone is likely to be rare. To ensure a consistent approach across UK Border Agency, maintenance and accommodation should be included in the grounds for refusal only if this has been approved at SEO level or above.

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

3.6. Granting leave to remain

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

3.7. Statistical Codes

G1 Extension - Spouse is a British citizen

- G2 Extension - Spouse holds settled status only
- G4 Extension - Spouse is an EEA national

3.8. Refusal of leave to remain

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

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

ANNEX G provides examples of refusal formulae.

3.9. Curtailment of stay

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

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

3.10. Statistical Codes

- Q2 Refusal - Unlawful marriage
- Q3 Refusal - Accommodation
- Q4 Refusal - Maintenance
- Q8 Refusal - Maintenance and accommodation
- QA Refusal - Couple have not met
- QB Refusal - Marriage terminated
- QC Refusal - No intention to live together
- Q9 Refusal - Other reasons, including spouse not settled or other combinations of the above

4. SETTLEMENT

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

4.1. Key points

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

4.2. **Applications for indefinite leave to remain at the end of the probationary period**

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

4.3. **Delayed travel on Entry Clearances conferring leave to enter**

A person who arrived with an entry clearance which has effect as leave to enter as a foreign spouse, but who delayed their travel to the UK for some time after the "valid from" date, will (if entry clearance was valid for 24 months) be unable to complete the probationary period prior to the expiry of their conditions. Casework Instruction 103/606 gives guidance on how such cases should be handled.

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

4.4. **Interviews**

For guidance on interviews, see chapter 8, section 1 paragraph 3.4. **Annex A** also provides guidance for caseworkers when considering interviewing applicants **at the settlement stage**.

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

4.5. **Absences from UK during probationary period**

There is no specific requirement in the Rules that the entire probationary period must be spent in the United Kingdom. For example, where an applicant has spent a limited period outside of the United Kingdom in connection with his employment, this should not count against him. However, if he has spent the majority of the period overseas, there may be reason to doubt that all the requirements of the Rules have been met. Each case must be judged on its merits, taking into account reasons for travel, length of absences and whether the applicant and sponsor travelled and lived together during the time spent outside the United Kingdom. These factors will need to be considered against the requirements of the Rules.

4.6. **Maintenance and accommodation**

As with granting leave to remain (paragraph 3.5 above refers), indefinite leave to remain is rarely refused on maintenance and accommodation grounds - either on their own or in combination with other grounds. To ensure a consistent approach across UK Border Agency, maintenance and accommodation should be included in the grounds for refusal only with the agreement of an SEO or above.

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

4.7. Unmarried partners who have since married

In some cases, a person may have been given leave to enter or leave to remain in the United Kingdom as an unmarried partner but may subsequently have married that partner during the probationary period. In such cases, that person may apply for settlement, provided they have served a total of 24 months, as either the unmarried partner or the spouse of the same person.

4.8 Granting settlement

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

4.9 Statistical Codes

Spouse settled here but not British citizen

- 5J Admitted as a fiancée and benefits under section 1(5)
- 5K Admitted as other fiancé(e)
- 5L Admitted as husband/wife
- 5M Women admitted other than as a wife or fiancée and benefits under section 1(5)
- 5N Admitted other than as a husband, wife or fiancé(e)

Spouse a British citizen

- 5P Admitted as a fiancé(e) and benefits under section 1(5)
- 5Q Admitted as other fiancé(e)
- 5R Admitted as husband/wife
- 5S Admitted other than as wife or fiancée and benefits under section 1(5)
- 5T Admitted other than as a husband, wife or fiancé(e)

Other marriage cases

- 5U Spouse accepted for settlement outside the Rules
- 5V Unmarried (opposite sex) partner

4.10 Refusal of settlement

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

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

ANNEX G provides examples of refusal formulae.

4.11 Statistical Codes

- J8 Refusal - Marriage terminated or no intention to live together
- J9 Refusal - General considerations including recourse to public funds

5. BEREAVED SPOUSES

Paragraphs 287(b) make provision for spouses, who are bereaved during the probationary period to be granted indefinite leave to remain in the UK, ***provided that the marriage was subsisting at the time of the sponsor's death.***

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

The Rules relating to bereaved spouses, do not apply to fiancé(e)s.

The Immigration Rules also include a provision for bereaved civil partners, unmarried partners and same sex partners. This paragraph is included in the guidance for spouses, civil partners, unmarried and same sex partners

5.1. Key Points

- the applicant has limited leave to enter or remain in the UK as the spouse, unmarried or same sex partner or civil partner of a person present and settled here; and
- the relationship was subsisting at the time of the sponsor's death. 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 it will be appropriate to grant indefinite leave to remain on sight of the sponsor's death certificate and without further enquiry.

5.2. Doubtful cases

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 not in a position to prove the subsistence of a relationship where their spouse, unmarried or same sex partner or civil partner has died.*** It is expected that refusals of bereaved spouse, unmarried or same sex partner or civil partner applications will be extremely rare and that applications will only be refused where there is sufficient evidence to suggest that the refusal would be upheld at appeal.

5.3. Further Guidance

Caseworkers should remember that bereaved applicants will be in some distress and

any necessary enquiries should be made *with tact and diplomacy*.

Not all spouses, civil partners, unmarried or same sex partner will wish to settle in the United Kingdom if their sponsor has died, preferring to return to their country of origin or ordinary residence. In such cases an applicant may be granted *further leave to remain for 6 months*, subject to the same conditions, to give them time to sort out their affairs.

5.4. Refusals

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

5.5. Statistical Codes

Initial period granted as a spouse or civil partner

5D	Grant ILR due to death of spouse
53D	Grant ILR due to death of civil partner
J9	Refuse ILR despite death of spouse
JC	Refuse ILR despite death of civil partner

Initial period granted as an unmarried (opposite sex) partner under the unmarried partners provision

5E	Grant ILR due to death of partner
J3	Refuse ILR despite death of partner

Initial period granted as a same sex partner under the same sex partners provision

5F	Grant ILR due to death of partner
J4	Refuse ILR despite death of partner

5.6. Timeliness of applications

The Rules relating to bereaved spouses, unmarried and same sex partners, and civil partners are intended to benefit only those whose sponsor has died during the probationary period and who make their application whilst they still have limited leave to enter or remain in the United Kingdom.

The Rule should, of course, be applied equally to cases where the sponsor dies during the consideration process i.e. 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 probationary 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.

5.7. Out of time applications

Applications made "out of time" after the expiry of the applicant's limited leave **where all the other requirements of the Rules are met** should nevertheless 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 sponsor'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.

6. VICTIMS OF DOMESTIC VIOLENCE

There is provision for spouses of British citizens and persons settled here who have been subjected to domestic violence during the probationary period to apply for indefinite leave to remain as the victim of domestic violence. Further guidance on dealing with applications from victims of domestic violence can be found in **Chapter 8, Section 4**.

7. SPOUSES OF MEMBERS OF HM FORCES, PERMANENT MEMBERS OF HM DIPLOMATIC SERVICE, COMPARABLE UK- BASED STAFF MEMBERS OF THE BRITISH COUNCIL ON A TOUR OF DUTY OVERSEAS, OR STAFF MEMBERS OF THE DEPARTMENT FOR INTERNATIONAL DEVELOPMENT WHO ARE BRITISH CITIZENS OR UK SETTLED

Paragraph 281 of HC 395 as amended makes special provision for overseas national spouses who marry members of HM Forces or permanent members of the Diplomatic Service, comparable UK-based staff members of the British Council on a tour of duty overseas, or staff members of the Department for International Development who are British citizens or UK- settled and who would otherwise find it difficult to obtain settlement in the UK.

7.1. Granting leave to enter and settlement

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

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

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

7.2. Further guidance

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

7.3. Consideration of settlement applications

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

7.4. Further guidance

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

7.5. Refusing a settlement application

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

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

8. OTHER CASES

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

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

8.1. Granting a further 12 months

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

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