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**CHAPTER 8
SECTION 9****UNMARRIED & SAME SEX RELATIONSHIPS****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 unmarried or same sex partner of a person present and settled here or being admitted on the same occasion for settlement.

Paragraphs 295A -295G of HC 395 as amended by HC 538 and HC 582 set out the provisions for leave to enter or remain for persons in this category. The relationship may be same-sex or opposite sex, but may not be a consanguineous relationship.

Paragraph 295AA of HC395 as amended by HC 538, HC 582 and HC 1113 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 an unmarried or same sex partner 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.

When considering applications from partners of persons in a category leading to settlement, reference should also be made to the IDI relating to the partner's category.

When considering applications from partners of persons granted asylum reference should also be made to Asylum Casework Directorate (ACD) instructions.

This Rule also applies to unmarried or same sex partners of European Economic Area (EEA) nationals who are exercising or coming to the United Kingdom to exercise a Treaty right. Caseworkers should also refer to the ED instructions.

Details regarding unmarried or same-sex partners of diplomats can be found in IDI Ch 14 Section 1.

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 THE UNMARRIED OR SAME SEX PARTNER OF A PERSON PRESENT AND SETTLED IN THE UNITED KINGDOM OR BEING ADMITTED ON THE SAME OCCASION FOR SETTLEMENT

The requirements to be met by a person seeking leave to enter as an unmarried or same sex partner of a person present and settled in the United Kingdom or being admitted on the same occasion for settlement are set out in paragraph 295A of HC 395 as amended and **must** be referred to when reading the following advice. In addition, both the applicant and sponsor must be aged 21 or over on the date of the applicant's arrival in the UK (paragraph 295AA HC 395).

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 that an application under these Rules is made, is physically present here or is coming here with or to join the applicant and intends to make the 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 Immigration Officer needs to be satisfied that:

- the passenger holds a valid entry clearance endorsed "ACCOMPANYING/TO JOIN PARTNER", or "SETTLEMENT/TO JOIN [*partners surname and first initial*]", 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 and compassionate circumstances, which would prevent refusal and removal.

2.5. Granting leave to enter

Unmarried or same sex partners in possession of an entry clearance endorsed "ACCOMPANYING/TO JOIN PARTNER [*partner's surname and first initial*]", and who have evidence that the partner is settled in the United Kingdom or being admitted on the same occasion for settlement should be granted leave to enter for 27 months on code 1 and advised to apply to the UK Border Agency for indefinite leave to remain (on the basis of the still subsisting relationship) **not earlier than 28 days** before their leave is due to expire.

2.6. Granting indefinite leave to enter

An unmarried or same sex partner who has completed a period of 4 years as the unmarried or same sex partner of a British citizen or person settled here, having lived together abroad with that person throughout that 4 year period, and arrives in possession of an entry clearance endorsed "SETTLEMENT/TO JOIN PARTNER [*partner's surname and first initial*]" should be granted indefinite leave to enter. **[Paragraph 295B of HC395 as amended]**

2.7. Statistical Codes

CL Unmarried (opposite sex) partner - probationary period
SSP Same sex partner - probationary period

2.8. 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, he should be refused under paragraph 295C of HC 395. Immigration Officers should verbally advise the applicant that their application has been considered under the **unmarried and same sex partners' requirements** but they hold no entry clearance for entry in this capacity.
- A **visa national** seeking entry without a valid United Kingdom entry clearance falls to be refused under Paragraph 320(5) of HC 395. 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 he was previously given leave, reference must be made, before refusal to **Chapter 1, Section 9, "Persons returning to resume previous leave"**

ANNEX AA provides examples of refusal formulae

2.9. On entry refusal codes

- E4 Lack of required non-settlement entry clearance, including those set aside on the 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 those set aside on the grounds of misrepresentation, forgery, failure to disclose material facts or where a change of circumstances has removed the basis of claim to admission

2.10. Right of appeal and corresponding refusal form

See IDI chapter 12 for details on appeal rights.

3. LEAVE TO REMAIN AS AN UNMARRIED OR SAME SEX PARTNER 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 the unmarried or same sex partner of a person present and settled here are:

- (i) the applicant has limited leave to remain in the United Kingdom which was given in accordance with any of the provisions of the Immigration Rules; and
- (ii) any previous marriage or civil partnership by either partner has permanently broken down; and
- (iii) the applicant is the unmarried or same sex partner of a person who is present and settled in the United Kingdom; and
- (iv) the applicant has not remained in breach of the immigration laws; and
- (v) the parties are not involved in a consanguineous relationship with one another; and
- (vi) the parties have been living together in a relationship akin to marriage or civil partnership which has subsisted for two years or more; and
- (vii) the parties relationship pre-dates any decision to deport the applicant, recommend him for deportation, give him notice under Section 6(2) of the

Immigration Act 1971, or give directions for his removal under section 10 of the Immigration and Asylum Act 1999; and

- (viii) there will be adequate accommodation for the parties and any dependants without recourse to public funds in accommodation which they own or occupy exclusively; and
- (ix) the parties will be able to maintain themselves and any dependants adequately without recourse to public funds; and
- (x) the parties intend to live together permanently.

In addition, both applicant and sponsor must be aged 21 or over on the date on which leave would be granted (paragraph 295AA HC 395).

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 is here **lawfully** and has a relationship akin to marriage or civil partnership, which has subsisted for 2 years or more, with a person who is present and settled here;
- ◆ the applicant's leave was granted within the Immigration Rules;
- ◆ any previous marriage or civil partnership by either partner has permanently broken down;
- ◆ the relationship is subsisting and that the couple intend living together permanently.

Annex Z *provides further guidance to staff on these key points, and the type of documentary evidence required*

Where an applicant has overstayed or appears to be an illegal entrant, referral should be made to separate instructions issued by the Enforcement Policy Unit.

3.2. Making further enquiries

As applicants will be expected to supply documentary evidence that their relationship with their unmarried or same sex partner has subsisted for 2 years or more (see **Annex Z** to this Section), it is not envisaged that further enquiries will normally be necessary. However, should the caseworker consider that further enquiries **are** necessary, **Annex A to Chapter 8, Section 1&2 (Spouses & Civil Partners)** will provide guidance.

3.3. Maintenance and accommodation

Applicants will provide information on these requirements when completing the

application form. The whole application should be assessed according to the Rules but refusal on maintenance and accommodation grounds (either on this ground alone or in a combination with other grounds) 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 Senior Caseworker level or above.

Further guidance on maintenance and accommodation can be found in Chapter 8 Section 1&2 Annex F

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

3.4. Granting leave to remain

Provided the requirements set out in paragraph 3. are met, leave to remain should be granted for 2 years on code 1. 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 relationship.

3.5. Statistical Codes

K1 Extension – Unmarried (opposite sex) partner is a British citizen or holds settled status

D1 Extension - Same sex partner is a British citizen or holds settled status

3.6. 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.

Leave to remain as the unmarried or same sex partner of a person present and settled in the United Kingdom is to be refused if each of the requirements set out in paragraph 3 is not met.

Refusal of leave to remain as an unmarried or same sex partner of a person settled in the United Kingdom is under HC 395 paragraph 295F as amended.

An accompanying letter should be sent to the applicant explaining that the application has been considered under the ***unmarried or same sex partners' requirements*** but they do not qualify for leave to remain under this Rule. The reasons why they do not meet the terms of the Rule should be explained.

ANNEX AA provides examples of refusal formulae

3.7. Statistical codes

These will all be refusals for purposes covered by the Rules and the following statistical

codes relate to the reasons why the Rules cannot be applied. **Annex AA** provides further guidance.

- K3 Refusal - No intention to live together (unmarried (opposite sex) partner)
- D5 Refusal - No intention to live together (same sex partner)
- K6 Refusal - Couple have not lived together for 2 years in a relationship akin to marriage (unmarried (opposite sex) partner)
- D6 Refusal - Couple have not lived together for 2 years in a relationship akin to a civil partnership
- K7 Refusal - Other reasons, including partner is not in an appropriate category or other combinations of the above (unmarried (opposite sex) partner)
- D7 Refusal - Other reasons, including partner is not in an appropriate category or other combinations of the above (same sex partner)
- K8 Refusal – Of further extension: relationship has ended (unmarried (opposite sex) partner)
- D8 Refusal – Of further extension: relationship has ended (same sex partner)

4. LEAVE TO ENTER OR REMAIN AS THE UNMARRIED OR SAME SEX PARTNER OF A PERSON WITH LIMITED LEAVE TO ENTER OR REMAIN IN THE UNITED KINGDOM UNDER HC 395 PARAGRAPHS 128-193; 200-239; OR 263-270

The requirements for leave to enter or remain in this category are:

- (i) the applicant is the unmarried or same sex partner of a person who has limited leave to enter or remain in the United Kingdom under paragraphs 128-193; 200-239; or 263-270; and
- (ii) any previous marriage or civil partnership by either partner has permanently broken down; and
- (iii) the parties are not involved in a consanguineous relationship with one another; and
- (iv) the parties have been living together in a relationship akin to marriage or civil partnership which has subsisted for 2 years or more; and
- (v) each of the parties intends to live with the other as his partner during the applicant's stay; and
- (vi) there will be adequate accommodation for the parties and any dependants without recourse to public funds in accommodation which they own or occupy exclusively; and
- (vii) the parties will be able to maintain themselves and any dependants adequately without recourse to public funds; and

- (viii) the applicant does not intend to stay in the United Kingdom beyond any period of leave granted to his partner; and
- (ix) if seeking leave to enter, the applicant holds a valid United Kingdom entry clearance for entry in this capacity or, if seeking leave to remain, was admitted with a valid United Kingdom entry clearance for entry in this capacity.

4.1. **Key points - leave to enter**

The main points on which the Immigration Officer needs to be satisfied are that:

- the passenger holds a valid entry clearance endorsed "ACCOMPANYING/TO JOIN PARTNER [*partner's surname and first initial*]; 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.

4.2. **Key points - further leave to remain**

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 entered with a valid entry clearance for entry in this capacity
Note: please see relevant IDI relating to the sponsor's category regarding the ability to switch.
- the relationship is subsisting and the couple intend living together permanently.

4.3. **Further guidance and making further enquiries**

See paragraphs 2.2 and 3.2 above

4.4. **Granting leave to enter**

Unmarried or same sex partners in possession of an entry clearance endorsed "ACCOMPANYING/TO JOIN PARTNER [*partner's surname and first initial*]", and who have evidence of their partner's status in the United Kingdom should be granted leave to enter for 27 months on code 1, or for a period of leave not in excess of their partner's leave (whichever is less). They should be advised to apply for further leave to remain in line with their partner's stay (or to make up the probationary period) on the basis of the still subsisting relationship not earlier than one month before their leave is due to expire.

4.5. **Granting further leave to remain**

An application for further leave to remain in this capacity may be granted under the requirements of the Immigration Rules for unmarried or same sex partners for a period

of leave not in excess of that granted to the person with limited leave to remain under HC 395 paragraphs 128-193; 200-239 or 263-270.

Where leave for less than 2 years was granted on entry, but the partner has since been granted an extension, further leave may be granted to take them up to 2 years in total. Where the applicant has completed a 2 year period granted on this basis, further leave to remain may be granted in line with their partner.

An application for indefinite leave to remain in this category may be granted under the requirements of the Immigration Rules for unmarried and same sex partners provided the applicant was admitted with a valid United Kingdom entry clearance for entry in this capacity and is able to satisfy the Secretary of State that each of the requirements set out above in 4 (i)-(viii) is met and provided indefinite leave to remain is, at the same time, being granted to the person with limited leave to enter or remain under HC 395 paragraphs 128-193; 200-239; or 263-270.

4.6. **Statistical codes**

K2 Unmarried (opposite sex) partner - completion of probationary period or in line with partner

D2 Same sex partner - completion of probationary period or in line with partner

4.7. **Refusal of leave to enter or remain**

Leave to enter or remain in the United Kingdom as the unmarried or same sex partner of a person with limited leave to enter or remain in the United Kingdom under HC 395 paragraphs 128-193; 200-239 or 263-270 is to be refused if, in relation to an application for leave to enter, a valid United Kingdom entry clearance for entry in this capacity is not produced to the Immigration Officer on arrival or, in the case of an application for limited leave to remain, if the applicant was not admitted with a valid United Kingdom entry clearance for entry in this capacity or is unable to satisfy the Secretary of State that each of the requirements set out above in 4 (i)-(viii) is met.

An application for indefinite leave to remain in this category is to be refused if the applicant was not admitted with a valid United Kingdom entry clearance for entry in this capacity or is unable to satisfy the Secretary of State that each of the requirements set out above in 4 (i)-(viii) is met or if indefinite leave to remain is not, at the same time, being granted to the person with limited leave to enter or remain under HC 395 paragraphs 128-193; 200-239 or 263-270.

Applications for leave to enter:

*Visa nationals should be refused under **HC 395 paragraph 320(5)***

*Non visa nationals should be refused under **HC 395 paragraph 295L***

Applications for leave to remain:

*Refusal will be under **HC 395 paragraph 295L***

See paragraphs 2.7- 2.9 and 3.6 -3.7 above for refusal codes.

Annex AA provides examples of refusal formulae

5. SETTLEMENT

The requirements to be met by a person seeking indefinite leave to remain as the unmarried or same sex partner of a person settled in the United Kingdom are

- (i) (a) the applicant was admitted to the United Kingdom for a period not exceeding 27 months or given an extension of stay for a period of 2 years in accordance with paragraphs 295AA to 295F HC 395 and has completed a period of 2 years as the unmarried or same sex partner of a person present and settled here; or
 - (b) the applicant was admitted to the UK or given an extension of stay as the unmarried or same-sex partner of a Tier 1 Migrant, and then obtained an extension of stay under paragraphs 295AA to 295F of the Rules and has completed a period of 2 years as the unmarried or same-sex partners of the person who is now present and settled here; or
 - (c) the applicant was admitted to the United Kingdom in accordance with leave granted under paragraph 295B(c) of the Rules; and
- (ii) the applicant is still the unmarried or same sex partner of the person he was admitted or granted an extension of stay to join and the relationship is still subsisting; and
- (iii) each of the parties intends to live permanently with the other as his partner; and
- (iv) there will be adequate accommodation for the parties and any dependants without recourse to public funds in accommodation which they own or occupy exclusively; and
- (v) the parties will be able to maintain themselves and any dependants adequately without recourse to public funds; and
- (vi) the applicant has sufficient knowledge of the English language and sufficient knowledge about life on the United Kingdom, unless he is under the age of 18 or aged 65 or over at the time he makes his application.

5.1. Key points

Caseworkers must satisfy themselves that:

- ◆ the relationship is subsisting and that each of the parties has the intention to live together permanently with the other as his or her unmarried or same sex partner in a relationship akin to marriage or a civil partnership.

5.2. Absences from UK during probationary period

There is no specific requirement in the Immigration Rules that the entire probationary

period must be spent in the United Kingdom. For example, where an applicant has spent a limited period outside 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.

5.3. **Maintenance and accommodation**

As with granting leave to remain (paragraph 3.3 above refers) indefinite leave to remain is only rarely refused on maintenance and accommodation grounds either on their own or in combination with other grounds. Given this and the need 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 a Senior Caseworker or above.

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

5.4. **Granting settlement**

Indefinite leave to remain as the unmarried or same sex partner of a person present and settled in the United Kingdom may be granted under paragraph 295G of the Immigration Rules for unmarried or same sex partners provided the Secretary of State is satisfied that each of the requirements is met.

5.5. **Unmarried or same sex partners who have since married or formed a civil partnership**

Unmarried or same sex partners who have married or formed a civil partnership during the probationary period can apply for settlement as the spouse or civil partner of a person present and settled in the United Kingdom.

The requirements, as set out in paragraph 287 of the Immigration Rules, are that:

- the applicant must have been admitted to the United Kingdom for a period not exceeding 27 months or given an extension of stay for a period of 2 years in accordance with paragraphs 295AA to 295F of the Immigration Rules; and
- during that period, he or she must have married or formed a civil partnership with the person who they were admitted or given an extension of stay to join; and
- the applicant must have completed a total of 2 years as either the unmarried partner and spouse or same sex partner or civil partner of that person.

5.6. **Statistical Codes**

5V Completed probationary period as an unmarried (opposite sex) partner of a British citizen or a person settled here

5W Completed probationary period as a same sex partner of a British citizen or person settled here

Note: Statistical codes relating to granting settlement to an unmarried or same sex partner under the domestic violence provision and the requirements of the Immigration Rules for bereaved spouses / civil partners are contained in CHAPTER 8, SECTIONS 1, 2 and 4.

5.7. Refusal of settlement

Indefinite leave to remain for the unmarried or same sex partner of a person present and settled in the United Kingdom is to be refused if the Secretary of State is not satisfied that each of the above requirements is met.

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 indefinite leave to remain as an unmarried or same sex partner of a British citizen or person settled here is under HC 395 paragraph 295I.

An accompanying letter should be sent to the applicant explaining that the application has been considered under the **unmarried or same sex partners' requirements** but they do not qualify for leave to remain under the Immigration Rules. The reasons why they do not meet the requirements of the Rules should be explained.

ANNEX AA provides examples of refusal formulae.

5.8. Statistical codes

J1 Refusal - Relationship terminated or no intention to live together (unmarried (opposite sex) partner)

J2 Refusal - Relationship terminated or no intention to live together (Same sex partner)

J3 Refusal - Other reasons including recourse to public funds (unmarried (opposite sex) partner)

J4 Refusal - Other reasons including recourse to public funds (Same sex partner)

6. BEREAVED UNMARRIED & SAME SEX PARTNERS

Paragraphs 287(b) and 295M-295O of HC 395 (as amended by HC 582) make provision for unmarried and same sex partners who are bereaved during the probationary period to be granted indefinite leave to remain in the UK, **provided that the relationship was subsisting at the time of the sponsor's death.**

These Rules do not apply to persons admitted to the UK as the unmarried or same sex partner 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.

Further guidance on dealing with applications from bereaved civil partners can be found in **Chapter 8, Section 1, paragraph 6.**

7. UNMARRIED OR SAME SEX PARTNERS 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

THIS SHOULD BE READ IN CONNECTION WITH CHAPTER 8 SECTION 1

Paragraph 281 of HC 395 (as amended by Cm 4851, Cm 5597 and HC 582) makes provision for overseas nationals who marry or enter into civil partnerships with members of HM Forces, 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 who would otherwise find it difficult to obtain settlement. Paragraph 295A of HC395 (as amended by Cm 4851 and Cm 5597) extends this provision to those who qualify under the requirements of the Immigration Rules for unmarried or same sex partners.

7.1. Granting leave to enter and settlement

Where a HM Forces member, 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, enters into an unmarried or same sex relationship with an overseas national whilst on a tour of duty abroad, the unmarried or same sex partner may obtain an entry clearance on this basis provided all the requirements of the Immigration Rules for unmarried or same sex partners are met.

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