

Statutory Document 2020/0011



**STATEMENT OF
CHANGES IN
IMMIGRATION RULES**

Laid before Tynwald on 21 January 2020 under section 3(2) of the
Immigration Act 1971 (an Act of Parliament as extended to the Isle of Man by the
Immigration (Isle of Man) Order 2008 (SI 2008 no. 680))

The Cabinet Office has made the following changes to the Immigration Rules laid down by it as to the practice to be followed in the administration of the Immigration Act 1971¹ (of Parliament) as it has effect in the Isle of Man² for regulating entry into and the stay of persons in the Isle of Man and contained in the Statement laid before Tynwald on 17 May 2005³.

Commencement

All changes set out in this Statement take effect on 4 February 2020.

Changes to Part 7

7.1 After paragraph 276A03, insert—

“276A04. Where a person who has made an application for indefinite leave to remain under this Part does not meet the requirements for indefinite leave to remain but falls to be granted limited leave to remain under this Part on the basis of long residence or private life in the Isle of Man, or outside the rules on Article 8 grounds—

- (a) the Minister will treat that application for indefinite leave to remain as an application for limited leave to remain;
- (b) [not used]; and
- (c) [not used]”.

7.2 In paragraph 276ADE—

- (a) in sub-paragraph (1)(i), for “Section S-LTR 1.2 to S-LTR 2.3. and S-LTR.3.1. to S-LTR.4.4.”, substitute “Section S-LTR 1.1 to S-LTR 2.2. and S-LTR.3.1. to S-LTR.4.5”;
- (b) in sub-paragraph (1)(iv), after “(discounting any period of imprisonment)”, insert “and it would not be reasonable to expect the applicant to leave the Isle of Man”.

7.3 For sub-paragraph 276DE(a), substitute—

“(a) the applicant has been in the Isle of Man with continuous leave on the grounds of private life for a period of at least 120 months. This continuous leave will disregard any current period of overstaying where paragraph 39E of these Rules

¹ 1971 c. 77

² See the Immigration (Isle of Man) Order (S.I. 2008 No 680)

³ S.D. 62/05 amended by S.D.692/05, S.D. 442/06, S.D. 547/06, S.D. 781/06, S.D. 871/06, S.D. 124/07, S.D. 303/07, S.D. 534/07, S.D. 02/08, S.D. 500/08, GC 32/09, GC 35/09, GC 14/10, GC 26/10, GC 02/11, SD 518/11, SD 40/12, SD 0288/12, SD 0625/12, SD 0657/12, SD250/13, SD 302/13, SD 345/13 ,SD 2014/0004, SD 2014/0082, SD 2014/241, SD2014/314 , SD2014/324, SD2015/0265, SD2015/0386, SD2016/0092, SD2016/0175, SD5016/0211, SD2017/0066, SD2017/0183, SD2017/0314, SD2018/0084, SD2018/0134, SD2018/0328, SD2019/0119, SD2019/0143 and SD2019/0330.

applies. Any previous period of overstaying between periods of leave on the grounds of private life will also be disregarded where –

- (i) the further application was made before 4 February 2019 and within 28 days of the expiry of leave; or
- (ii) the further application was made on or after 4 February 2019 and paragraph 39E of these Rules applied;”.

7.4 For sub-paragraph 276DG(b), substitute –

“(b) the applicant has not demonstrated sufficient knowledge of the English language or about life in the UK and Islands in accordance with Appendix KoLL,

the applicant may be granted further limited leave to remain on the grounds of private life in the Isle of Man for a period not exceeding 30 months, and subject to a condition of no recourse to public funds unless the Minister considers that the person should not be subject to such a condition.”.

Changes to Part 8

8.1 In sub-paragraph 298(vii), omit “or 319R”.

8.2 in paragraph 314 –

- (a) in sub-paragraph (i)(a), after “is being given”, insert “or has been given”; and
- (b) in sub-paragraph (x), omit “or remaining in”.

Changes to Appendix FM

FM1. For GEN.1.4., substitute –

“GEN.1.4. In this Appendix “specified” means specified in Appendix FM-SE, unless otherwise stated.”.

FM2. In paragraph GEN.1.6., for “ELTRP.4.1.(a)” substitute “E-LTRP.4.1.(a)”.

FM3. For GEN 1.10, substitute –

“GEN.1.10. Where paragraph GEN.3.1.(2) or GEN.3.2.(3) applies, and the applicant is granted entry clearance or leave to enter or remain under, as appropriate, paragraph D-ECP.1.2., D-LTRP.1.2., D-ECC.1.1., D-LTRC.1.1., D-ECPT.1.2. or D-LTRPT.1.2., that grant of entry clearance or leave to enter or remain will be subject to a condition of no recourse to public funds unless the decision-maker considers, with reference to paragraph GEN.1.11A., that the applicant should not be subject to such a condition.”.

FM4. In paragraph GEN.1.11., omit “, or where an applicant does not meet the requirements of this Appendix as a partner or parent but the decision maker grants entry clearance or leave to enter or remain outside the rules on Article 8 grounds,”.

FM5. After paragraph GEN.1.11., insert—

“GEN.1.11A. Where entry clearance or leave to remain as a partner, child or parent is granted under paragraph D-ECP.1.2., D-LTRP.1.2., D-ECC.1.1., D-LTRC.1.1., D-ECPT.1.2. or D-LTRPT.1.2., it will normally be granted subject to a condition of no recourse to public funds, unless the applicant has provided the decision-maker with—

- (a) satisfactory evidence that the applicant is destitute; or
- (b) satisfactory evidence that there are particularly compelling reasons relating to the welfare of a child of a parent in receipt of a very low income.

For the purposes of this paragraph, a person is destitute if the person does not have adequate accommodation or any means of obtaining it (whether or not the person’s other essential living needs are met) or the person has adequate accommodation or the means of obtaining it, but cannot meet the person’s other essential living needs.”.

FM6. For paragraph GEN.1.13., substitute—

“GEN.1.13. For the purposes of paragraphs D-LTRP.1.1., D-LTRP.1.2., DILRP.1.2., D-LTRPT.1.1., D-LTRPT.1.2. and D-ILRPT.1.2. (excluding a grant of limited leave to remain as a fiancé(e) or proposed civil partner), where at the date of application the applicant has extant leave as a partner or parent (as applicable) granted under this Appendix, the remaining period of that extant leave up to a maximum of 28 days will be added to the period of limited leave to remain granted under that paragraph (which may therefore exceed 30 months).”.

FM7. In paragraph GEN.1.14., omit “(or outside the rules on Article 8 grounds)”.

FM8. After paragraph GEN.1.14., insert—

“GEN.1.15. Where, pursuant to paragraph D-ILRP.1.2., D-ILRP.1.3., D-ILRPT.1.2. or D-ILRPT.1.3., a person who has made an application for indefinite leave to remain under this Appendix does not meet the requirements for indefinite leave to remain but falls to be granted limited leave to remain under those provisions or paragraphs 276ADE(1) to 276DH—

- (a) the Minister will treat that application for indefinite leave to remain as an application for limited leave to remain;
- (b) [not used]; and

(c) [not used]

GEN.1.16. Where an application or claim raising Article 8 is considered under Appendix FM and EX.1. applies, the requirements of paragraphs R-LTRP.1.1.(c) and R-LTRPT.1.1.(c) are not met.”

FM9. In GEN.2.1., for “The requirements”, substitute “Subject to paragraph GEN.2.3., the requirements”.

FM10. In paragraph GEN.2.3.—

- (a) at the end of sub-paragraph (2)(a) insert “or”;
- (b) in sub-paragraph (2)(b), for “; or”, substitute “.”; and
- (c) omit sub-paragraph (c).

FM11. After paragraph GEN.2.3., insert—

“Exceptional circumstances

GEN.3.1.(1) Where—

- (a) the financial requirement in paragraph E-ECP.3.1., E-LTRP.3.1. (in the context of an application for limited leave to remain as a partner), E-ECC.2.1. or E-LTRC.2.1. applies, and is not met from the specified sources referred to in the relevant paragraph; and
- (b) it is evident from the information provided by the applicant that there are exceptional circumstances which could render refusal of entry clearance or leave to remain a breach of Article 8 of the European Convention on Human Rights, because such refusal could result in unjustifiably harsh consequences for the applicant, their partner or a relevant child; then

the decision-maker must consider whether such financial requirement is met through taking into account the sources of income, financial support or funds set out in paragraph 21A(2) of Appendix FM-SE (subject to the considerations in sub-paragraphs (3) to (8) of that paragraph).

- (2) Where the financial requirement in paragraph E-ECP.3.1., E-LTRP.3.1. (in the context of an application for limited leave to remain as a partner), E-ECC.2.1. or E-LTRC.2.1. is met following consideration under sub-paragraph (1) (and provided that the other relevant requirements of the Immigration Rules are also met), the applicant will be granted entry clearance or leave to remain under, as appropriate, paragraph D-ECP.1.2., D-LTRP.1.2., D-ECC.1.1. or D-LTRC.1.1. or paragraph 315 or 316B of the Immigration Rules.

GEN.3.2. (1) Subject to sub-paragraph (4), where an application for entry clearance or leave to enter or remain made under this Appendix, or an application for leave to remain which has otherwise been considered under this Appendix, does not otherwise meet the requirements of this Appendix or Part 9 of the Rules, the decision-maker must consider whether the circumstances in sub-paragraph (2) apply.

- (2) Where sub-paragraph (1) above applies, the decision-maker must consider, on the basis of the information provided by the applicant, whether there are exceptional circumstances which would render refusal of entry clearance, or leave to enter or remain, a breach of Article 8 of the European Convention on Human Rights, because such refusal would result in unjustifiably harsh consequences for the applicant, their partner, a relevant child or another family member whose Article 8 rights it is evident from that information would be affected by a decision to refuse the application.
- (3) Where the exceptional circumstances referred to in sub-paragraph (2) above apply, the applicant will be granted entry clearance or leave to enter or remain under, as appropriate, paragraph D-ECP.1.2., D-LTRP.1.2., D-ECC.1.1., D-LTRC.1.1., D-ECPT.1.2., D-LTRPT.1.2., D-ECDR.1.1. or D-ECDR.1.2.
- (4) This paragraph does not apply in the context of applications made under section BPILR or DVILR.

GEN.3.3.(1) In considering an application for entry clearance or leave to enter or remain where paragraph GEN.3.1. or GEN.3.2. applies, the decision-maker must take into account, as a primary consideration, the best interests of any relevant child.

- (2) In paragraphs GEN.3.1. and GEN.3.2., and this paragraph, “relevant child” means a person who—
 - (a) is under the age of 18 years at the date of the application; and
 - (b) it is evident from the information provided by the applicant would be affected by a decision to refuse the application.”.

FM12. In paragraph S-EC.1.4., omit “Where this paragraph applies, unless refusal would be contrary to the Human Rights Convention or the Convention and Protocol Relating to the Status of Refugees, it will only be in exceptional circumstances that the public interest in maintaining refusal will be outweighed by compelling factors.”.

FM13. In paragraph S-EC.1.5., omit the first occurrence of “or”.

FM14. In paragraph S-EC.1.6., for “wih”, substitute “with”.

- FM15. In sub-paragraph E-ECP.3.1.(d), for “Immigration (EEA) Regulations 2008”, substitute “EEA Regulations”.
- FM16. In sub-paragraph E-ECP.3.3.(b), omit “specified”.
- FM17. In sub-paragraph E-ECP.3.4., omit “specified”.
- FM18. In sub-paragraph E-ECP.4.1.(d), for “EECP.4.2.”, substitute “E-ECP.4.2.”.
- FM19. For paragraphs D-ECP.1.1. and D-ECP.1.2., substitute—
- “D-ECP.1.1. Except where paragraph GEN.3.1.(2) or GEN.3.2.(3) of this Appendix applies, an applicant who meets the requirements for entry clearance as a partner (other than as a fiancé(e) or proposed civil partner) will be granted entry clearance for an initial period not exceeding 33 months, 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 in the Isle of Man with leave to enter granted on the basis of such entry clearance or with limited leave to remain as a partner granted under paragraph D-LTRP.1.1. (excluding in all cases any period of leave to enter or limited leave to remain as a fiancé(e) or proposed civil partner); or, where the applicant is a fiancé(e) or proposed civil partner, the applicant will be granted entry clearance for a period not exceeding 6 months, and subject to a prohibition on employment and a condition of no recourse to public funds.
- D-ECP.1.2. Where paragraph GEN.3.1.(2) or GEN.3.2.(3) of this Appendix applies, an applicant who meets the requirements for entry clearance as a partner (other than as a fiancé(e) or proposed civil partner) will be granted entry clearance for an initial period not exceeding 33 months, and subject to a condition of no recourse to public funds unless the decision-maker considers, with reference to paragraph GEN.1.11A., that the applicant should not be subject to such a condition, and they will be eligible to apply for settlement after a continuous period of at least 120 months in the Isle of Man with leave to enter granted on the basis of such entry clearance or of entry clearance granted under paragraph D-ECP.1.1. or with limited leave to remain as a partner granted under paragraph D-LTRP.1.1. or D-LTRP.1.2. (excluding in all cases any period of leave to enter or limited leave to remain as a fiancé(e) or proposed civil partner); or, where the applicant is a fiancé(e) or proposed civil partner, the applicant will be granted entry clearance for a period not exceeding 6 months, and subject to a prohibition on employment and a condition of no recourse to public funds.
- D-ECP.1.3. If the applicant does not meet the requirements for entry clearance as a partner, the application will be refused.”.
- FM20. In sub-paragraph R-LTRP.1.1(d)(ii), for “E-LTRP.2.1.”, substitute “E-LTRP.2.1-2.2.; and”.

- FM21. For sub-paragraphs S-LTR.1.7.(b) and (c), substitute—
- “(b) provide information;
 - (c) provide physical data; or
 - (d) undergo a medical examination or provide a medical report.”.
- FM22. In paragraph S-LTR.2.1., for “2.5”, substitute “2.4”.
- FM23. Omit paragraph S-LTR.2.5.
- FM24. After paragraph E-LTRP.1.11., insert—
- “E-LTRP.1.12. The applicant’s partner cannot be the applicant’s fiancé(e) or proposed civil partner, unless the applicant was granted entry clearance as that person’s fiancé(e) or proposed civil partner.”.
- FM25. In sub-paragraph E-LTRP.3.1.(d), for “Immigration (EEA) Regulations 2006”, substitute “EEA Regulations”.
- FM26. In sub-paragraph E-LTRP.3.3.(b), omit “specified”.
- FM27. In paragraph E-LTRP.3.4., omit “specified”.
- FM28. In paragraph E-LTRP.4.1A.—
- (a) in sub-paragraph (i), for “E-LTRP.4.1.(b) or E-LTRPT.5.1.(b)”, substitute “E-ECP.4.1.(b), E-LTRP.4.1.(b), E-ECPT.4.1.(b) or E-LTRPT.5.1.(b) on the basis that they had passed an English language test in speaking and listening at level A1 of the Common European Framework of Reference for Languages”; and
 - (b) at the end of sub-paragraph (d), insert—
“;
unless paragraph EX.1. applies.”.
- FM29. For paragraphs D-LTRP.1.1. and D-LTRP.1.2., substitute—
- “D-LTRP.1.1. 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 limited leave to remain for a period not exceeding 30 months, 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 Isle of Man with leave to enter granted on the basis of entry clearance granted under paragraph D-ECP.1.1. (excluding in all cases any period of leave to enter or limited leave to remain 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.

D-LTRP.1.2. If the applicant meets the requirements in paragraph R-LTRP.1.1.(a), (b) and (d) for limited leave to remain as a partner, or paragraph GEN.3.1.(2) or GEN.3.2.(3) applies to an applicant for leave to remain as a partner, the applicant will be granted leave to remain for a period not exceeding 30 months and subject to a condition of no recourse to public funds unless the decision-maker considers, with reference to paragraph GEN.1.11A., that the applicant should not be subject to such a condition, and they will be eligible to apply for settlement after a continuous period of at least 120 months in the Isle of Man with such leave, with limited leave to remain as a partner granted under paragraph D-LTRP.1.1., or in the Isle of Man with leave to enter granted on the basis of entry clearance as a partner granted under paragraph D-ECP1.1. or D-ECP.1.2. (excluding in all cases any period of leave to enter or limited leave to remain 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.”.

FM30. In paragraph R-ILRP.1.1. —

- (a) at the end of sub-paragraph (c), insert “and”; and
- (b) omit sub-paragraph (d).

FM31. In paragraph S-ILR.4.3. —

- (a) omit “from the Secretary of State”; and
- (b) for “United Kingdom”, substitute “Isle of Man or United Kingdom”.

FM32. For paragraph E-ILRP.1.3., substitute —

“E-ILRP.1.3. (1) Subject to sub-paragraph (2), the applicant must, at the date of application, have completed a continuous period of either —

- (a) at least 60 months in the Isle of Man with —
 - (i) leave to enter granted on the basis of entry clearance as a partner granted under paragraph D-ECP.1.1.; or
 - (ii) limited leave to remain as a partner granted under paragraph D-LTRP.1.1.; or
 - (iii) a combination of (i) and (ii); or
- (b) at least 120 months in the Isle of Man with —
 - (i) leave to enter granted on the basis of entry clearance as a partner granted under paragraph D-ECP.1.1. or D-ECP.1.2.; or
 - (ii) limited leave to remain as a partner granted under paragraph D-LTRP.1.1. or D-LTRP.1.2.; or

(iii) a combination of (i) and (ii).

(1A) In respect of an application falling within sub-paragraph (1)(a) above, the applicant must meet all of the requirements of section E-LTRP: Eligibility for leave to remain as a partner (except that paragraph E-LTRP.1.2. cannot be met on the basis set out in sub-paragraph (c) of that paragraph, and in applying paragraph E-LTRP.3.1.(b)(ii) delete the words “2.5 times”).

(1B) In respect of an application falling within sub-paragraph (1)(b) above—

- (a) the applicant must meet all of the requirements of paragraphs E-LTRP.1.2.-1.12. (except that paragraph E-LTRP.1.2. cannot be met on the basis set out in sub-paragraph (c) of that paragraph) and E-LTRP.2.1. - 2.2.; and
- (b) paragraph EX.1. must apply.

(2) In calculating periods of leave for the purposes of sub-paragraph (1) above, any period of leave to enter or limited leave to remain as a fiancé(e) or proposed civil partner will be excluded.”.

FM33. For sub-paragraph EX.1.(ii), substitute—

“(ii) taking into account their best interests as a primary consideration, it would not be reasonable to expect the child to leave the Isle of Man; or”.

FM34. After paragraph EX.1., insert—

“EX.2. For the purposes of paragraph EX.1.(b) “insurmountable obstacles” means the very significant difficulties which would be faced by the applicant or their partner in continuing their family life together outside the Isle of Man and which could not be overcome or would entail very serious hardship for the applicant or their partner.”.

FM35. In paragraph E-DVILR.1.2., for all instances of “UK”, substitute “Isle of Man”.

FM36. In paragraph E-DVILR.1.3., omit “specified”.

FM37. In paragraph E-ECC.1.6. for “be applying, or have applied”, substitute “or is being granted, or has been granted,”.

FM38. In sub-paragraph E-ECC.2.1.(d), for “Immigration (EEA) Regulations 2009”, substitute “EEA Regulations”.

FM39. In paragraph E-ECC.2.2., for “EECC. 2.1.”, substitute “E-ECC.2.1.”.

FM40. In sub-paragraph E-ECC.2.3.(b), omit “specified”.

FM41. In paragraph E-EEC.2.4.—

- (a) rename the paragraph “E-ECC.2.4.”; and

- (b) omit “specified”.
- FM42. In paragraph D-ECC.1.1., for “and subject to a condition of no recourse to public funds”, substitute “and will be subject to the same conditions in respect of recourse to public funds as that parent”.
- FM43. In the second occurrence of sub-paragraph R-LTRC.1.1.(d)(ii)—
- (a) renumber the sub-paragraph “(iii)”; and
 - (b) for “D-LTRP.1.2. or D-LTRPT.1.2.”, substitute “D-LTRP.1.2., D-ILRP.1.2., D-LTRPT.1.2. or D-ILRPT.1.2.”.
- FM44. In the second occurrence of sub-paragraph E-LTRC.2.1.(c), for “Immigration (EEA) Regulations2009”, substitute “EEA Regulations”.
- FM45. In paragraph E-LTRC.2.2., for “ELTRC. 2.1.”, substitute “E-LTRC.2.1.”.
- FM46. In sub-paragraph E-LTRC.2.3.(b), omit “specified”.
- FM47. For paragraph “E-LTRC2.4.”, rename the paragraph “E-LTRC.2.4.”.
- FM48. In paragraph D-LTRC.1.1., for “, and if the applicant’s parent is granted indefinite leave to remain the applicant will be granted indefinite leave to remain.”, substitute “. To qualify for indefinite leave to remain as a child of a person with indefinite leave to remain as a partner or parent, the applicant must meet the requirements of paragraph 298 of these rules.”.
- FM49. In paragraph E-ECPT.2.4.—
- (a) for sub-paragraphs (a)(i) and (ii), substitute—
 - “(i) sole parental responsibility for the child; or
 - (ii) direct access (in person) to the child, as agreed with the parent or carer with whom the child normally lives or as ordered by a court in the Isle of Man; and”;
 - (b) in sub-paragraph E-ECPT.2.4.(b), omit “specified”.
- FM50. In paragraph E-ECPT.3.1., omit “specified”.
- FM51. In paragraph E-ECPT.3.2., omit “specified”.
- FM52. For paragraphs D-ECPT.1.1. and D-ECPT.1.2., substitute—
- “D-ECPT.1.1. If the applicant meets the requirements for entry clearance as a parent (except where paragraph GEN.3.2.(3) applies), 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, and they will be eligible to apply for settlement after a continuous period of at least 60 months in the Isle of Man with leave to enter

granted on the basis of such entry clearance or with limited leave to remain as a parent granted under paragraph D-LTRPT.1.1.

D-ECPT.1.2. If paragraph GEN.3.2.(3) applies to an applicant for entry clearance as a parent, 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 unless the decision-maker considers, with reference to paragraph GEN.1.11A., that the person should not be subject to such a condition, and they will be eligible to apply for settlement after a continuous period of at least 120 months in the Isle of Man with leave to enter granted on the basis of such entry clearance or of entry clearance granted under paragraph D-ECPT.1.1. or with limited leave to remain as a parent granted under paragraph D-LTRPT.1.1. or D-LTRPT.1.2.

D-ECPT.1.3. If the applicant does not meet the requirements for entry clearance as a parent, the application will be refused.”

- FM53. In sub-paragraph R-LTRPT.1.1.(d)(ii), for “E-LTRPT.3.1.”, substitute “E-LTRPT.3.1.-3.2.; and”.
- FM54. In paragraph E-LTRPT.2.4. —
- (a) for sub-paragraphs (a)(i) and (ii), substitute—
 - “(i) sole parental responsibility for the child; or
 - (ii) direct access (in person) to the child, as agreed with the parent or carer with whom the child normally lives or as ordered by a court in the Isle of Man; and”; and
 - (b) in sub-paragraph (b), omit “specified”.
- FM55. In paragraph E-LTRPT.3.2., omit “or UK”.
- FM56. In paragraph E-LTRPT.4.1., omit “specified”.
- FM57. In paragraph E-LTRPT.4.2., omit “specified”.
- FM58. In sub-paragraph E-LTRPT.5.1A.—
- (a) in sub-paragraph (i), for E-LTRPT.5.1.(b) or E-LTRP.4.1.(b)”, substitute “E-ECP.4.1.(b), E-LTRP.4.1.(b), E-ECPT.4.1.(b) or E-LTRPT.5.1.(b)”.
 - (b) at the end of sub-paragraph (iii)(d), insert—
 - “;
 - unless paragraph EX.1. applies.”.
- FM59. For paragraphs D-LTRPT.1.1 and D-LTRPT.1.2., substitute—
“D-LTRPT.1.1. If the applicant meets the requirements in paragraph R-LTRPT.1.1.(a) to (c) for limited leave to remain as a parent the applicant will be

granted limited leave to remain for a period not exceeding 30 months, and subject to a condition of no recourse to public funds, and they will be eligible to apply for settlement after a continuous period of at least 60 months with such leave or in the Isle of Man with leave to enter granted on the basis of entry clearance as a parent granted under paragraph D-ECPT.1.1.

D-LTRPT.1.2. If the applicant meets the requirements in paragraph R-LTRPT.1.1.(a), (b) and (d) for limited leave to remain as a parent, or paragraph GEN.3.2.(3) applies to an applicant for leave to remain as a parent, the applicant will be granted leave to remain for a period not exceeding 30 months and subject to a condition of no recourse to public funds unless the decision-maker considers, with reference to paragraph GEN.1.11A., that the applicant should not be subject to such a condition, and they will be eligible to apply for settlement after a continuous period of at least 120 months in the Isle of Man with such leave, with limited leave to remain as a parent granted under paragraph D-LTRPT.1.1., or in the Isle of Man with leave to enter granted on the basis of entry clearance as a parent granted under paragraph D-ECPT.1.1. or D-ECPT.1.2.”.

FM60. In paragraph R-ILRPT.1.1. —

- (a) in sub-paragraph (c), after “leave to remain;” insert “and”; and
- (b) omit sub-paragraph (d).

FM61. For paragraph E-ILRPT.1.3., substitute—

“E-ILRPT.1.3. (1) The applicant must, at the date of application, have completed a continuous period of either —

(a) at least 60 months in the Isle of Man with—

- (i) leave to enter granted on the basis of entry clearance as a parent granted under paragraph D-ECPT.1.1.; or
- (ii) limited leave to remain as a parent granted under paragraph D-LTRPT.1.1.; or
- (iii) a combination of (i) and (ii);

or

(b) at least 120 months in the Isle of Man with—

- (i) leave to enter granted on the basis of entry clearance as a parent granted under paragraph D-ECPT.1.1. or D-ECPT.1.2.; or
- (ii) limited leave to remain as a parent granted under paragraph D-LTRPT.1.1. or D-LTRPT.1.2.; or
- (iii) a combination of (i) and (ii).

(1A) In respect of an application falling within sub-paragraph (1)(a) above, the applicant must meet all of the requirements of Section E-LTRPT: Eligibility for leave to remain as a parent.

(1B) In respect of an application falling within sub-paragraph (1)(b) above—

(a) the applicant must meet all of the requirements of paragraphs E-LTRPT.2.2.- 2.4. and E-LTRPT.3.1.- 3.2.; and

(b) paragraph EX.1. must apply.”.

FM62. In paragraph E-ECDR.3.1., omit “specified”.

FM63. In paragraph E-ILRDR.1.4., omit “specified”.

FM64. In paragraph D-ILRDR.1.2., after “adult dependent relative”, insert “because”.

Changes to Appendix FM-SE

FMSE1. Omit sub-paragraph D(b)(i)(cc).

FMSE2. Omit sub-paragraph D(d)(ii).

FMSE3. In sub-paragraph D(d), omit “The decision-maker reserves the right to request the specified original document(s) in the correct format in all cases where sub-paragraph (b) applies, and to refuse applications if this material is not provided as set out in sub-paragraph (b).”.

FMSE4. In paragraph A1 for “EECC. 2.1.”, substitute “E-ECC.2.1.”.

FMSE5. In paragraph 1—

(a) in sub-paragraph (b), after the first occurrence of “accepted”, insert “, except in the limited circumstances set out in paragraph 21A (and to the extent permitted by the paragraph)”;

(b) in sub-paragraph (bb)(i), omit “original”;

(c) in sub-paragraph (c)—

(i) omit “only”; and

(ii) for “EECP 3.2.(a) and E-ECC.2.2.(a) of Appendix FM”, substitute “E-ECP.3.2.(a) and E-ECC.2.2.(a) of Appendix FM, or where paragraph 21A of this Appendix so permits”;

(d) number the paragraph after sub-paragraph (c) “(cc)”;

(e) in sub-paragraph (j), for “provide the original”, substitute “provide the document in the original language”;

(f) in sub-paragraph (j)(i), omit “original”; and

- (g) in sub-paragraph (j)(ii), omit “original”.
- FMSE6. In paragraph 2, after sub-paragraph (d), insert—
- “(e) Where a person appointed as a non-executive director of a limited company based in the Isle of Man, which is not a company of the type specified in paragraph 9(a), is paid a fee instead of a salary, this income may be treated and evidenced as though it were income received for employment in that capacity.”.
- FMSE7. In paragraph 4, for “EECC. 2.2.(a)”, substitute “E-ECC.2.2.(a)”.
- FMSE8. In sub-paragraph 5(b)(ii), after “12 months prior”, insert “to the date of application or”.
- FMSE9. In sub-paragraph 6(b)(i), after “6 months”, insert “(and where paragraph 13(b) does not apply)”.
- FMSE10. For sub-paragraph 7(g), substitute—
- “(g) Evidence of ongoing self-employment through the provision of at least one of the following: a bank statement dated no more than three months earlier than the date of application showing transactions relating to ongoing trading, or evidence dated no more than three months earlier than the date of application of the renewal of a licence to trade or of ongoing payment of business rates, business-related insurance premiums, employer National Insurance contributions or franchise payments to the parent company.”.
- FMSE11. After paragraph 8, insert—
- “8A. In respect of prospective self-employment in the Isle of Man (for an applicant’s partner or parent’s partner who, in respect of paragraph E-ECP.3.2.(a) or E-ECC.2.2.(a) of Appendix FM, is in self-employment outside the Isle of Man at the date of application and is returning to the Isle of Man to continue that self-employment), one of the following must be provided, with a starting date within three months of the person’s return to the Isle of Man—
- (a) an application to the appropriate authority for a licence to trade;
 - (b) details of the purchase or rental of business premises;
 - (c) a signed employment contract or a signed contract for the provision of services; or
 - (d) a partnership or franchise agreement signed by the relevant parties to the agreement.”.
- FMSE12. In paragraph 9—

- (a) for “paragraph 9(b)-(d)”, substitute “paragraph 9(b)-(e)”;
- (b) in sub-paragraph (b)(vii)(1), after “VAT return for the”, insert “last”; and
- (c) in sub-paragraph (b)(vii)(3), omit “Original”.

FMSE13. In paragraph 10—

- (a) in sub-paragraph (a)(ii), after “Personal bank statements for”, insert “or from”;
- (b) in sub-paragraph (b)(iii), after “in the Isle of Man)”, insert “or a dividend voucher showing the company and person’s details with the person’s net dividend amount”;
- (c) in sub-paragraph (c)(i) after “personal bank statements for”, insert “or from”; and
- (d) in sub-paragraph (d)(ii) after “personal bank statements for”, insert “or from”;
- (e) in sub-paragraph (g)(i), after “12 months”, insert “or for at least one full academic year”;
- (f) in sub-paragraph (h)(ii) after “personal bank statements for”, insert “or from”; and
- (g) in sub-paragraph (i)(ii), for “personal bank statements for the 12-month period”, substitute “personal bank statements for or from the 12-month period”.

FMSE14. In paragraph 11A—

- (a) in sub-paragraph (a), after “deposit or investment account”, insert “, provided by a financial institution regulated by the appropriate regulatory body for the country in which that institution is operating”;
- (b) in sub-paragraph (c)(iv), after “investment account”, insert “or pension account or fund”; and
- (c) in sub-paragraph (d)(iv)(5), for “ubparagraphs”, substitute “sub-paragraphs”.

FMSE15. In sub-paragraph 12A(c), after “sponsor”, insert “, or income from employment and/or shares in a limited company based in the Isle of Man of a type to which paragraph 9 applies,”.

FMSE16. In paragraph 13—

- (a) after “E-LTRC.2.1. will”, insert “, subject to paragraph 21A of this Appendix,”;

- (b) in sub-paragraph (b), after “6 months”, insert “(or at least 6 months but the person does not rely on paragraph 13(a))”; and
- (c) name the paragraph after sub-paragraph (b)(ii), “(iii)”.

FMSE17. In paragraph 17, after “partnership”, insert “(including where this is in the form of a profit share)”.

FMSE18. For sub-paragraph 18(f), substitute—

“(f) For the purpose of paragraph 13(b)(i), “the gross annual salary from employment as it was at the date of application” of a person in non-salaried employment at the date of application shall be considered to be the annual equivalent of—

(aa) the person’s gross income from non-salaried employment in the period immediately prior to the date of application, where the employment has been held for a period of no more than one month at the date of application; or

(bb) the person’s average gross monthly income from non-salaried employment, where the employment has been held for a period of more than one month at the date of application.”.

FMSE19. For sub-paragraph 19(b), substitute—

“(b) Where the self-employed person is a sole trader or is in a partnership or franchise agreement, the income will be the gross taxable profits from their share of the business in the relevant financial year(s), not including any deductible allowances, expenses or liabilities which may be applied to the gross taxable profits to establish the final tax liability.”.

FMSE20. After paragraph 21, insert—

“Other sources of income, financial support or funds in exceptional circumstances

21A(1). Where paragraph GEN.3.1.(1) of Appendix FM applies, the decision-maker is required to take into account the sources of income, financial support or funds specified in sub-paragraph (2).

(2) Subject to sub-paragraphs (3) to (8), the following sources of income, financial support or funds will be taken into account (in addition to those set out in, as appropriate, paragraph E-ECP.3.2., E-LTRP. 3.2., E-ECC.2.2. or E-LTRC.2.2. of Appendix FM)—

(a) a credible guarantee of sustainable financial support to the applicant or their partner from a third party;

(b) credible prospective earnings from the sustainable employment or self-employment of the applicant or their partner; or

(c) any other credible and reliable source of income or funds for the applicant or their partner, which is available to them at the date of application or which will become available to them during the period of limited leave applied for.

(3) Where the applicant is a child—

(a) other references in this paragraph to “applicant” mean the “applicant’s parent” under paragraph E-ECC.1.6. or E-LTRC.1.6. of Appendix FM; and

(b) references in this paragraph to “partner” refer to the “applicant’s parent’s partner” under those paragraphs.

(4) The onus is on the applicant to satisfy the decision-maker of the genuineness, credibility and reliability of the source of income, financial support or funds relied upon, on the basis of the information and evidence provided, having regard (in particular, but without limitation) to the factors set out below.

(5) The source of income, financial support or funds must not be a loan, unless evidence submitted with the application shows that—

(a) the source is a mortgage on a residential or commercial property in the Isle of Man or overseas which at the date of application is owned by the applicant, their partner or both, or by the third party to whom sub-paragraph (2)(a) refers;

(b) the mortgage is provided by a financial institution regulated by the appropriate regulatory body for the country in which that institution is operating; and

(c) the mortgage payments are reasonably affordable by the person(s) responsible for them and are likely to remain so for the period of limited leave applied for.

(6) Any cash savings or any current financial investment or product relied upon by the applicant under sub-paragraph (2)(c) must at the date of application be in the name(s), and under the control, of the applicant, their partner or both.

(7) Any cash savings relied upon by the applicant must enable the financial requirement in paragraph E-ECP.3.1.(b), E-LTRP.3.1.(b), E-ECC.2.1.(b) or E-LTRC.2.1.(b) of Appendix FM (as applicable) to be met, except that the criteria in sub-paragraph (8)(c) apply in place of the requirements in paragraphs 11 and 11A of this Appendix.

(8) In determining the genuineness, credibility and reliability of the source of income, financial support or funds relied upon under sub-paragraph (2), the decision-maker will take into account all the information and evidence provided, and will consider (in particular) —

(a) in respect of a guarantee of sustainable financial support from a third party —

(i) whether the applicant has provided verifiable documentary evidence from the third party in question of their guarantee of financial support;

(ii) whether that evidence is signed, dated and witnessed or otherwise independently verified;

(iii) whether the third party has provided sufficient evidence of their general financial situation to enable the decision-maker to assess the likelihood of the guaranteed financial support continuing for the period of limited leave applied for;

(iv) whether the third party has provided verifiable documentary evidence of the nature, extent and duration of any current or previous financial support which they have provided to the applicant or their partner;

(v) the extent to which this source of financial support is relied upon by the applicant to meet the financial requirement in paragraph E-ECP.3.1., E-LTRP.3.1., E-ECC.2.1. or E-LTRC.2.1. of Appendix FM (as applicable); and

(vi) the likelihood of a change in the third party's financial situation or in their relationship with the applicant or the applicant's partner during the period of limited leave applied for.

(b) in respect of prospective earnings from sustainable employment or self-employment of the applicant or their partner —

(i) whether, at the date of application, a specific offer of employment has been made, or a clear basis for self-employment exists. In either case, such employment or self-employment must be expected to commence within three months of the applicant's arrival in the Isle of Man (if the applicant is applying for entry clearance) or within three months of the date of application (if the applicant is applying for leave to remain);

(ii) whether the applicant has provided verifiable documentary evidence of the offer of employment or the basis for self-employment, and, if so, whether that evidence—

(aa) is on the headed notepaper of the company or other organisation offering the employment, or of a company or other organisation which has agreed to purchase the goods or services of the applicant or their partner as a self-employed person;

(bb) is signed, dated and witnessed or otherwise independently verified;

(cc) includes (in respect of an offer of employment) a signed or draft contract of employment;

(dd) includes (in respect of self-employment) any of a signed or draft contract for the provision of goods or services; a signed or draft partnership or franchise agreement; an application to the appropriate authority for a licence to trade; or details of the agreed or proposed purchase or rental of business premises;

(iii) whether, in respect of an offer of employment in the Isle of Man, the applicant has provided verifiable documentary evidence—

(aa) of a relevant employment advertisement and employment application;

(bb) of the hours to be worked and the rate of gross pay, which that evidence must establish equals or exceeds the Isle of Man Minimum Wage (as applicable, given the age of the person to be employed) and equals or exceeds the going rate for such work in the Isle of Man; and

(cc) which enables the decision-maker to assess the reliability of the offer of employment, including in light of the total size of the workforce and the turnover (annual gross income or sales) of the relevant company or other organisation;

(iv) whether the applicant has provided verifiable documentary evidence that at the date of application, the person to be employed or self-employed is in, or has recently been in, sustained employment or self-employment of the same or a similar type, of the same or a similar level of complexity and at the same or a similar level of responsibility;

- (v) whether the applicant has provided verifiable documentary evidence that the person to be employed or self-employed has relevant professional, occupational or educational qualifications and that these are recognised in the Isle of Man;
 - (vi) whether the applicant has provided verifiable documentary evidence that the person to be employed or self-employed has the level of English language skills such prospective employment or self-employment is likely to require;
 - (vii) the extent to which this source of income is relied upon by the applicant to meet the financial requirement in paragraph E-ECP.3.1., E-LTRP.3.1., E-ECC.2.1. or E-LTRC.2.1. of Appendix FM (as applicable); and
 - (viii) where an offer of employment is relied upon, and where the proposed employer is a family member or friend of the applicant or their partner, the likelihood of a relevant change in that relationship during the period of limited leave applied for.
- (c) in respect of any other credible and reliable source of income or funds for the applicant or their partner —
- (i) whether the applicant has provided verifiable documentary evidence of the source;
 - (ii) whether that evidence is provided by a financial institution regulated by the appropriate regulatory body for the country in which that institution is operating, and is signed, dated and witnessed or otherwise independently verified;
 - (iii) where the income is or the funds are based on, or derived from, ownership of an asset, whether the applicant has provided verifiable documentary evidence of its current or previous ownership by the applicant, their partner or both;
 - (iv) whether the applicant has provided sufficient evidence to enable the decision-maker to assess the likelihood of the source of income or funds being available to them during the period of limited leave applied for; and
 - (v) the extent to which this source of income or funds is relied upon by the applicant to meet the financial requirement in paragraph E-ECP.3.1., E-LTRP.3.1., E-ECC.2.1. or E-LTRC.2.1. of Appendix FM (as applicable).”

FMSE21. In sub-paragraph 29(b), after “passport”, insert “or travel document”.

FMSE22. In paragraph 31 —

- (a) in sub-paragraph (b)(i), omit “original”;
- (b) in sub-paragraph (b)(i)(4), omit “Page 63 of 70”;
- (c) in sub-paragraph (b)(i)(5), omit “original”;
- (d) in sub-paragraph (b)(ii), omit “original”;
- (e) in sub-paragraph (b)(ii)(5), omit “ an original”; and
- (f) in sub-paragraph (c), for “an original”, substitute “a”.

FMSE23. In sub-paragraph 32B(b), for “the document and the applicant must provide”, substitute “the test certificate or result and require the applicant to provide”.

MADE 18 December 2019

HOWARD QUAYLE
Minister for the Cabinet Office

Explanatory Note
to the Statement of Changes In Immigration Rules SD 2020/0011

(This note is not part of the Statement of Changes in Immigration Rules)

This Statement of Changes introduces paragraphs GEN.3.1. GEN.3.2. and GEN.3.3. to Appendix FM, requiring the decision-maker, in the specified circumstances, to consider whether the minimum income requirement is met if other sources of income, financial support or funds, set out in the new paragraph 21A of Appendix FM-SE, are taken into account. Those paragraphs also require the decision maker to have regard, as a primary consideration, to the best interests of any child affected by the decision.

The specified circumstances are that the applicant does not meet the minimum income requirement and is able to evidence exceptional circumstances which could render refusal of the application a breach of Article 8 (the right to respect for private and family life) of the European Convention on Human Rights. The evidence must show how the decision could result in unjustifiably harsh consequences for the applicant, their partner, or a child under the age of 18 years, who would be affected by a decision to refuse the application.

A migrant granted leave under GEN.3.1. or GEN.3.2., on the grounds of exceptional circumstances, will be placed on a 10-year route to settlement (as opposed to the usual 5 years). The migrant may later apply to enter the 5-year route if the relevant requirements are met.

All applicants granted leave under Appendix FM are normally granted leave subject to a condition of no recourse to public funds. However under new paragraph GEN.1.11A this condition may be waived in exceptional circumstances where the applicant provides satisfactory evidence that, they are destitute, or where there are compelling reasons relating to the welfare of a child of a parent in receipt of very low income. If an applicant is granted leave without the condition restricting access to public funds, the applicant must meet all eligibility requirements for any public funds access, in the same way as any other Island resident.

Other minor technical amendments have been made to Part 7, Part 8, Appendix FM and Appendix FM-SE.