

**CHAPTER 8 SPOUSES & CIVIL PARTNERS
SECTION 1 & 2****FAMILY MEMBERS - MAINTENANCE AND ACCOMMODATION****1. INTRODUCTION**

This Annex provides guidance on how maintenance and accommodation tests apply to applications in the following categories:

- Spouses, civil partners and their dependants
- fiancé(e)s, proposed civil partners and their dependants
- children
- other dependent relatives

2. PUBLIC FUNDS

The requirements are designed to prevent the admission of persons who do not have realistic prospects of supporting themselves without recourse to public funds. For the purpose of the Immigration Rules "Public funds" means:

- Income Support/Jobseekers' Allowance (JSA)
- Housing and Homelessness Assistance
- Housing Benefit and Council Tax Benefit
- Family Credit*
- Child Benefit*
- Attendance Allowance
- Severe Disablement Allowance
- Invalid Care Allowance
- Disability Living Allowance
- Disability Working Allowance

* The **British/settled spouse or civil partner** may claim family credit and child benefit for his or her family if they are entitled to this under DWP legislation. Furthermore, where a foreign spouse / civil partner / unmarried or same sex partner is married or in a civil partnership or in a relationship to a person present and settled in the United Kingdom he/she may claim family credit on behalf of his/her spouse/civil partner/unmarried or same sex partner and family. For further information on the definition of public funds see **Chapter 1, Section 7 - Annex W**.

Home Office policy on public funds is that there is no objection to the British citizen/settled sponsor receiving any public funds to which he is entitled in his own right. The important factor to consider is whether there will be a need for the sponsor to claim **additional** public funds to support the applicant. The fact that an applicant may not be eligible to claim public funds is not in itself sufficient to satisfy the requirements of the Rules (see also **Chapter 1, Section 7 - Public Funds**).

3. FIANC(E)S / PROPOSED CIVIL PARTNERS

Paragraph 290 (iv), (v) and (vi) of HC 395 as set out in paragraph 3 of HC 26 requires that there must be adequate maintenance and accommodation for a fiancé(e) or proposed civil partner and any dependants both up to and after the date of the marriage or registering of the civil partnership. The main points to be considered are:

- the fiancé(e) or proposed civil partner will be prohibited from taking employment until he has been granted 2 years leave following the marriage or registering of the civil partnership; and
- it would not be reasonable to require a fiancé(e) or proposed civil partner overseas to be as clear as a spouse or civil partner may be about the couple's future accommodation.

3.1. Maintenance

The maintenance test will in most cases be based on the sponsor's income/employment and the applicant's employment prospects. There will also be cases where a friend or relative in the United Kingdom may offer assistance **until** the marriage or the civil partnership takes place and the applicant is free to take employment. An applicant may have a specific job waiting for him. Where he is relying on this job offer to meet the maintenance requirement of the Rules, care should be taken that the job offer is genuine and will be held open for him until such time as he is free to take employment.

3.2. Accommodation

Accommodation for the couple will often be **prospective** rather than **available** on arrival. The test should be based on the fact that there is a **reasonable prospect** that adequate accommodation will be available after the marriage or the civil partnership has taken place. This requirement will, of course, have to be satisfied on application for leave to remain on the basis of the marriage or civil partnership. In the period before the marriage or the civil partnership takes place temporary accommodation provided by relatives or friends will be acceptable.

4. SPOUSES / CIVIL PARTNERS

Paragraphs 281 (iv) & (v) and 284 (vii) & (viii) of HC 395 as set out in HC 26 and HC 582 require that the parties must be able to maintain and accommodate themselves and any dependants without recourse to public funds.

The *joint* income of the couple should be taken into account when assessing the adequacy of the funds available. When considering applications from a person who was admitted as a fiancé(e) or proposed civil partner, it will not normally be necessary to request evidence to show that they can support and accommodate themselves without recourse to public funds. An exception would be where there is evidence to suggest that the couple have already had recourse to public funds.

5. GENERAL

The earnings of either party should be taken into equal account. To be satisfied that the couple will be able to maintain themselves and any dependants adequately without recourse to public funds we will need to see evidence of:

- sufficient independent means; or
- employment for one or both of the parties; or
- sufficient prospects of employment for one or both the parties.

It would be appropriate to question the couple about the following areas during any interview:

- the applicant's present employment;
- the applicant's educational achievement;
- other skills or qualifications the applicant may have acquired that would assist in getting established in the United Kingdom;
- similar information about the sponsor;
- what plans the applicant may have for obtaining employment in the United Kingdom;
- what arrangements have been or could be made to obtain employment by the applicant, sponsor or friend or relatives in the United Kingdom;
- what other support is available to the couple from friends or relatives in the United Kingdom.

Verbal and documentary evidence should be assessed in the context of the employment situation where the couple intend to make their home. A judgement should be based on whether we are satisfied that the couple have a reasonable prospect of being able to maintain themselves and any dependants without recourse to public funds. Points to be borne in mind are:

- has the applicant and/or sponsor demonstrated relevant skills/qualifications or a reasonable prospect of employment?
- has the applicant and/or sponsor provided evidence that he has a job waiting for him in the United Kingdom?
- where the applicant has made no arrangements for employment, what are his prospects for employment in the light of his background. Some applicants will have skills or qualifications that will be of direct value to gaining employment in the United Kingdom and a decision can be made on the balance of probabilities. Others will have few skills or qualifications and may never have done anything but unskilled labour work. In such cases evidence of prospects will be necessary; for example that the applicant can show that there is a credible job open to him in the United Kingdom or that relatives or friends can realistically offer an opening. **Jobs that are unrealistic in the light of the applicant's skills or jobs that appear to have been manufactured and lack any prospect of continuing will not suffice.**
- care must be taken not to make assumptions. The fact that unemployment in a certain area is above average is not in itself enough for refusal. However, where there are already doubts, the employment situation is a factor which should be taken into account.

5.1. Assistance from other sources

A couple who are unable to produce sufficient evidence to meet the maintenance requirement, may provide an undertaking from members of their families that they will support the couple until they are able to support themselves from their own resources. **This is not acceptable** as the Rules require the couple to be able to support themselves and any dependants **from their own resources**. Nevertheless, such an arrangement **may** be accepted exceptionally if it is clear that it would only be in effect for a limited period and the couple have a realistic prospect of supporting themselves thereafter.

6. ACCOMMODATION

The word "exclusively" was added to HC 395 in reference to the accommodation requirement in order to make the Rules consistent with Tribunal determinations. Accommodation can be shared with other members of a family provided that at least part of the accommodation is for the exclusive use of the sponsor and his dependants. The unit of accommodation may be as small as a separate bedroom but:

- must be owned or legally occupied by the sponsor;
- its occupation must not contravene public health regulations; and
- its occupation must not cause overcrowding as defined in the Housing Act, 1985.

6.1. **Ownership**

The couple should provide evidence that the property is either owned or rented by themselves. This may be in the form of a letter from the building society, a copy of the property deeds and, in the case of rented accommodation, a rent book and lease agreement. Where the accommodation is rented from a local authority or housing association, correspondence from the landlord can normally be regarded as genuine and sufficient. Greater care needs to be taken where there is purportedly private tenancy. If there are any aspects of the case which raise substantial doubts, corroborative evidence of residence should be sought. If the accommodation is not "owned" (in the sense that the sponsor is not the head of the household but is, for instance, a son or daughter of the family) the Rules require there to be adequate accommodation, which the couple and their dependants occupy for their exclusive use. This need not be a separate house or self-contained flat but, where it is as little as one bedroom of their own, enquiries should be made about the number of rooms, the number of occupants in the house and whether this is only intended to be a short term arrangement.

6.2. **Housing standards**

Local authorities have the power to set different housing standards that must be met. It would **not** be appropriate however, to approach local authorities in each case to see whether their standards are met. The applicant or sponsor should be asked to provide evidence that the accommodation provided will be adequate. This may take the form of a letter from a housing authority, a building society or a description of the premises that we can be satisfied is accurate and genuine.

6.3. **Guidance on overcrowding**

The Housing Act 1985 contains statutory definitions of overcrowding in "dwelling houses". Dwelling houses covers both privately owned houses and those owned by local authorities. A house is overcrowded if 2 persons of 10 years old or more of opposite sexes (other than husband and wife) have to sleep in the same room, or if the number sleeping in the house exceeds that permitted in the Act.

The Act specifies the numbers permitted for a given number of rooms or given floor area. For our purposes we adopt the room number yardstick. Account is only taken of rooms with a floor area larger than 50 sq feet and rooms of a type used either as a living-room or bedroom; kitchens or bathrooms etc are not included.

Using the above noted yardstick, the following table provides guidance as to the acceptable (for our purposes) number of persons occupying a house with a stated number of rooms:

NO OF ROOMS	PERMITTED NO OF PERSONS
1	2
2	3
3	5
4	7.5
5	10
*	with an additional 2 persons for each room in excess of 5.

A child under the age of one does not count as a person. A child aged 1 - 10 years will count as only half a person.

There are separate overcrowding provisions for a house in multiple occupation (HMO), which is defined as "a house, which is occupied by persons who do not form a single household". This very wide definition covers hotels and hostels, as well as houses lived in by 2 or more couples of different generations where they do not share common facilities. The most common occurrence of this is likely to be a man seeking entry to join his wife and intending to live with her independently in a house also occupied by her family. The definition therefore includes a house lived in by 2 or more couples (even if related) excluding dependent children of the couple.

There are no hard and fast rules concerning overcrowding HMOs. Local authorities have the power to serve an overcrowding notice in relation to a house in multiple occupation specifying the maximum number of people permitted in a house, or serve a notice to prevent any further residents. Where an overcrowding notice renders an occupier homeless the council may be obliged to provide accommodation under the Housing Act 1985 - if for example the occupier has dependent children, or is old or infirm. Such accommodation would, of course, count under the Rules as recourse to public funds. In the case of HMOs it may be necessary to obtain written confirmation from the local authority that there is no objection to an additional resident moving in but see paragraph 6.2 above.

NB It should be noted that under the Act local authorities have the power to licence temporary overcrowding.

7. DEPENDANTS OF FIANC(E)S, PROPOSED CIVIL PARTNERS, SPOUSES AND CIVIL PARTNERS

The maintenance and accommodation requirements extend to dependants. This, however, only covers dependants relevant to the decision (e.g. a wife applying for herself and her children to join her husband in the United Kingdom). It would **not** be appropriate to base a refusal on the grounds that the couple would not be able support and accommodate any children they may have in the future. ***Questions about whether the couple intend to start a family should not be asked.***

8. SETTLEMENT

Paragraph 287 (iv) and (v) of HC 395 as set out in paragraph 6 of Cmnd 3365 requires that the couple should be able to maintain and accommodate themselves and any dependants without recourse to public funds. However, if a person has (through no fault of his or her own) had to have **strictly temporary** assistance from public funds, he should **not** be refused on this basis.

On completion of the probationary period applicants are required to provide full details of how they have maintained and accommodated themselves when completing an application form to apply for settlement. Detailed enquiries as to whether there had been recourse to public funds will therefore not be necessary. There is no power to refuse an application solely on the basis that the accommodation does not meet the relevant local authority's standards if the applicant and his dependants have not received emergency housing prior to the making of the decision (even if it appears likely the family will require emergency housing in the near future). **Only events known to the Secretary of State at the date of the decision may be taken into account.**

9. CURTAILMENT

Curtailement of leave should only be undertaken in exceptional cases and only then if the applicant has at least 6 months of his leave to run. Only if there is clear evidence that, shortly after the marriage or the civil partnership, the person who was granted leave on that basis had persistent recourse to public funds **and** there was little likelihood that the situation would change, should curtailment be considered.

Caseworkers should note that it is a matter for the DWP to decide whether to seek recovery of any benefits paid to a person from overseas.

*See instructions relating to **Public Funds** in Chapter 1 for more detailed guidance.*

10. CHILDREN AND OTHER DEPENDENT RELATIVES

As with spouses and civil partners, we must be satisfied under Paragraphs 297 (iv) and 298 (iv) of HC 395 that any children or other dependent relatives can be maintained and accommodated adequately, without recourse to public funds. This must be in accommodation that the sponsor owns or occupies himself **and** that he is able and willing to maintain them adequately without recourse to public funds. The same guidelines apply to dependants as with spouses and civil partners.

Care should be taken when considering refusing an application from a child or dependent relative on maintenance and/or accommodation grounds alone. Such cases should be considered on their merits and any compassionate circumstances should be taken into account. In cases of doubt the application should be referred to a senior caseworker.

10.1. Under 12 concession

The Under 12 concession was abolished on 29th March 2003.