



Home Office

# **Immigration Directorate Instruction**

## **Family Migration:**

### **Appendix FM Section 1.7A**

#### **Adequate Maintenance & Accommodation**

August 2015

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# 1. Introduction

On 9 July 2012 the Immigration Rules were changed to introduce new requirements for non-EEA nationals applying to enter or remain in the UK on the basis of their relationship with a family member who is a British Citizen, settled in the UK or in the UK with refugee leave or humanitarian protection.

From 9 July 2012 Appendix FM to the Immigration Rules replaced the previous maintenance requirement to be met by non-EEA nationals applying as a partner or dependent child with a new financial requirement based on a minimum income threshold. For details and guidance refer to [FM 1.7 Financial Requirement Guidance](#).

Some categories of applicant under Appendix FM are not required to meet the minimum income threshold – partners and dependent children whose sponsor is in receipt of a specified benefit (on the 5-year route to settlement as a partner); parents of child in the UK (on the 5-year route to settlement as a parent); and adult dependent relatives – and have instead to meet a requirement for ‘adequate’ maintenance. These categories are set out in Section 2.1.1, below.

All categories of applicant under Appendix FM, whether they are required to meet the minimum income threshold or a requirement for adequate maintenance, are also required to meet a requirement for ‘adequate’ accommodation.

This guidance applies to the requirements for ‘adequate’ maintenance and accommodation under Appendix FM to the Immigration Rules.

This guidance does not apply to the requirements for ‘adequate’ maintenance and accommodation under Part 8 of the Immigration Rules. For guidance on those requirements in Part 8, refer to [Part 8-Maintenance Guidance](#)

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## 2. Definition of ‘adequate’ maintenance

Paragraph 6 of the Immigration Rules sets out the definition of ‘adequate’ and ‘adequately’ that must be applied in all cases in relation to a maintenance and accommodation requirement:

**“adequate”** and **“adequately”** in relation to a maintenance and accommodation requirement shall mean that, after income tax, National Insurance contributions and housing costs have been deducted, there must be available to the family the level of income that would be available to them if the family was in receipt of Income Support.

This reflects the 2006 determination by the Upper Tribunal in KA and Others (Pakistan). See: <http://www.bailii.org/uk/cases/UKIAT/2006/00065.html>

The Immigration Rules do not specify the level of income or amount of funds sufficient for ‘adequate’ maintenance. This will be case specific and depend on the number of dependants in the family unit. If dependants of the main applicant are going to accompany them to, or remain with them in, the UK, then sufficient resources must be available for the whole family unit to be adequately maintained, regardless of their nationality or immigration status.

### 2.1. Who needs to meet the adequate maintenance requirement?

2.1.1. A requirement for adequate maintenance has to be met by the following categories of applicant under Appendix FM to the Immigration Rules:

Partner applying for entry clearance or leave to remain as a partner (on a 5-year route to settlement) whose partner is in receipt of a specified benefit:

- Paragraphs E-ECP.3.1.(c) and E-ECP.3.3.
- Paragraphs E-LTRP.3.1.(c) and E-LTRP.3.3.

Child whose parent is applying for entry clearance or leave to remain, or who has leave to remain, as a partner (on a 5-year route to settlement), and where the parent’s partner is in receipt of a specified benefit:

- Paragraphs E-ECC.2.1.(c) and E-ECC.2.3.
- Paragraphs E-LTRC.2.1.(c) and E-LTRC.2.3.

Child whose parent is applying for entry clearance or leave to remain as a parent or who has limited leave to enter or remain as a parent (on a 5 year route to settlement). This requirement to be adequately maintained applies to the applicant, the parent and any other dependent children.

- Paragraph E-ECC.2.3A.
- Paragraph E-LTRC.2.3A.

Parent applying for entry clearance or leave to remain as the parent of a child in the UK (on a 5-year route to settlement):

- Paragraph E-ECPT.3.1.

- Paragraph E-LTRPT.4.1.

A requirement for adequate maintenance will also have to be met in an application for indefinite leave to remain at the end of these 5-year routes to settlement, subject to paragraph 2.1.3. below.

Adult dependent relative applying for Indefinite Leave to Enter or Indefinite Leave to Remain (or applying for limited leave where the sponsor is in the UK with limited leave as a refugee or via humanitarian protection):

- Paragraph E-ECDR.3.1.
- Paragraph E-ILRDR.1.4.

2.1.2. Under paragraph E-ECP.3.3., E-LTRP.3.3., E-ECC.2.3. or E-LTRC.2.3 (partners on a 5-year route to settlement under Appendix FM and their children), to be able to meet the financial requirement through adequate maintenance, the applicant's partner or parent's partner must be receiving one or more of the following:

- Disability Living Allowance.
- Severe Disablement Allowance.
- Industrial Injury Disablement Benefit.
- Attendance Allowance.
- Carer's Allowance.
- Personal Independence Payment.
- Armed Forces Independence Payment or Guaranteed Income Payment under the Armed Forces Compensation Scheme.
- Constant Attendance Allowance, Mobility Supplement or War Disablement Pension under the War Pensions Scheme.

2.1.3. Under the 5-year partner route to settlement under Appendix FM, the applicant (and their children) will have to meet the minimum income threshold at the next application stage if their partner or parent's partner is no longer in receipt of one of the specified benefits above.

2.1.4. Some applicants under Appendix Armed Forces are also required to demonstrate that they will be adequately maintained without recourse to public funds. There is no assessment needed of whether they are exempt from the minimum income threshold because it does not apply to their category of application. See Part 4, Part 7, Part 9 and Part 10 of [Appendix Armed Forces](#) for details.

2.1.5. Adequate maintenance is not a requirement of applications under the 10-year partner, parent and private life routes to settlement under paragraphs R-LTRP.1.1.(a), (b) and (d) and R-LTRPT.1.1.(a), (b), and (d) of Appendix FM and paragraph 276 ADE(1) or outside the Rules on the basis of exceptional circumstances.

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## 3. Assessing adequate maintenance

### 3.1. How to assess adequate maintenance

The Upper Tribunal case of [Ahmed \[benefits; proof of receipt; evidence\] Bangladesh \[2013\] UKUT 84 \[IAC\]](#) directed the Home Office to evidence financial figures in all decision letters in which refusal was based on inadequate maintenance.

Therefore, decision makers considering an application for entry clearance, leave to remain, further leave to remain or indefinite leave to remain which has to meet a requirement for adequate maintenance must set out the financial position of the applicant/sponsor in **all** cases that fall for refusal using the following formula:

$$A - B \geq C$$

**A** minus **B** is greater than or equal to **C**.

Where:

**A** is the net income (after deduction of income tax and National Insurance contributions);  
**B** is housing costs (i.e. what needs to be spent on accommodation); and  
**C** is the amount of Income Support an equivalent British family of that size can receive.

The decision maker must take the following steps to assess the adequacy of the funds available:

- a) Establish the sponsor's and/or applicant's (if they are in the UK with permission to work) current total weekly net income (**A**).
  - If the net income varies, calculate a weekly mean average.
  - Include all net income currently received, including benefits currently received to which the person is entitled, but exclude third party support.
  - An entry clearance applicant may say they will be entitled to claim public funds in their own right in the UK, e.g. under reciprocal arrangements between the UK and their home country, and ask for this to be included in their net income. However, any potential future entitlement to benefits after the applicant arrives in the UK does not count towards net income when assessing adequate maintenance.
  - Where there are permitted cash savings, include a weekly equivalent figure (see 3.2).
- b) Establish the sponsor's current weekly housing costs from the evidence provided (**B**).
- c) Deduct the weekly housing costs from the weekly net income (**A**).
- d) Calculate how much a British family unit (of equivalent size to the sponsor and their family unit) would receive if they were in receipt of Income Support (**C**).
  - For details of current benefit rates see the document at the following link:

[http://www.rightsnet.org.uk/pdfs/rightsnet\\_benefit\\_rates\\_poster\\_2015\\_16.pdf](http://www.rightsnet.org.uk/pdfs/rightsnet_benefit_rates_poster_2015_16.pdf)

- Decision makers **must always** use the correct rates which apply at the date of their decision. Case studies in this guidance show the method for setting out a calculation and do not necessarily represent current rates.

e) Compare the weekly net income after deduction of weekly housing costs with the equivalent level of Income Support using the following formula:

$$A - B \geq C$$

**A minus B** is greater than or equal to **C**

Personal debt, including loans and credit card debt, should **not** be taken into account in this assessment. Only the weekly housing costs are deducted from the weekly net income.

Where the weekly equivalent of income or housing costs is calculated to part of a penny, decision makers should always round this figure down.

### 3.2. Example assessment of adequate maintenance

Mr X wishes to sponsor his wife and his two children from country Y. Currently Mr X receives weekly net income of £460.17.

Please use the following format to show the assessment of adequate maintenance as directed in the case of Ahmed.

a) Calculation of current total weekly net income (**A**):

Income source	Interval received	Equivalent weekly amount
Net income from employment (after deduction of income tax and NI contributions)	Weekly	£161.30
Working Tax Credit	£364.71 every four weeks Divided by 4 =	£91.18
Child Benefit	£134.80 every four weeks Divided by 4 =	£33.70
Child Tax Credit	Weekly	£93.99
Housing Benefit	Weekly	£80.00
<b>Total Income (A)</b>		<b>£460.17</b>

b) Calculation of current weekly housing costs (**B**):

Mr X's accommodation costs £150 per week to rent. The family do not have to pay Council Tax. Add together weekly rental or mortgage payments and Council Tax.

Housing costs	Interval paid	Equivalent weekly amount
Rent	Weekly	£150.00
Council Tax	£0.00	£0.00
<b>Total housing costs (B)</b>		<b>£150.00</b>

c) Deduction of weekly housing costs from the weekly net income:

Weekly net income **£460.17** minus weekly housing costs **£150 = £310.17**

d) Calculation of weekly income the family would receive if in receipt of Income Support (C):

To assess whether the sum of (A – B) is greater than or equal to the level of Income Support (C) a British family of that size would be entitled to receive, decision makers must in all cases demonstrate calculations in the following format:

An equivalent sized British family could receive the following Income Support:

Element	Interval	Amount
Income Support rate for a couple	Weekly	£113.70
Each dependent child from birth to age 20 £66.33 x 2	Weekly	£132.66
Family premium	Weekly	£17.45
<b>Total Income Support (C)</b>		<b>£263.81</b>

e) Compare the weekly net income less weekly housing costs to the equivalent Income Support figure:

**(A – B) £310.17** must be greater or equal to **(C) £263.81**

In this example **A minus B** is greater than **C** so the weekly net income less weekly housing costs is more than the weekly level of Income Support a British family of that size would be entitled to receive and therefore the 'adequate' maintenance requirement is met.

### 3.3. Cash savings

**Specified cash savings may be used instead of or in addition to income in assessing whether the adequate maintenance requirement is met.**

Under paragraph 12A(e) of [Appendix FM-SE](#) to the Immigration Rules, paragraphs 11 and

11A of [Appendix FM-SE](#) apply where the cash savings of the applicant or their partner, parent, parent's partner or sponsor are relied upon in full or in part to meet an adequate maintenance requirement under Appendix FM. The level of cash savings relied upon must have been held by the person (or by them and their partner jointly) for a period of at least 6 months prior to the date of application and must be under their control.

Cash savings can be held in any form of bank/savings account which allows immediate access to the funds (with or without a penalty for withdrawing funds without notice). This can include savings held in a pension savings account which can be immediately withdrawn. For the current requirements as to the cash savings which may be used and the specified evidence which must be provided, decision makers should refer to paragraphs 11 and 11A of [Appendix FM-SE](#). All cash savings which meet those rules can be counted towards meeting the adequate maintenance requirement and not just those above £16,000 which is the amount above which savings can be counted towards meeting the minimum income threshold. If the total savings figure fluctuates over the period of 6 months prior to the date of the application, decision makers should use the lowest figure evidenced for that period.

### 3.3.1. Entry Clearance and Leave to Remain

Under paragraph 12B of [Appendix FM-SE](#), once the total amount of cash savings which meets the requirements of paragraphs 11 and 11A has been calculated and evidenced, this can be divided by the number of weeks of limited leave which would be issued if the application was granted, and then expressed as a figure which can be used in the assessment at paragraph 3.1. above.

Example – The sponsor has savings of £3,000. This is then divided by the number of weeks in the leave period granted. (33 months for entry clearance = 143 weeks; 30 months for leave to remain = 130 weeks).

So if the application is for leave to remain, £3,000 divided by 130 weeks = £23.07

This means that £23.07 can be added to any weekly income received by the applicant/sponsor for the purpose of assessing adequate maintenance.

### 3.3.2. Indefinite Leave to Enter or Indefinite Leave to Remain

In these cases decision makers should divide the figure for cash savings by 52 weeks (1 year) to arrive at a figure which can be used in the assessment at paragraph 3.1. above.

Example – The sponsor has savings of £3,000, divided by 52 weeks = £57.69

This means that £57.69 can be added to any weekly income received by the applicant/sponsor for the purpose of assessing adequate maintenance.

## 3.4. Example assessment of adequate maintenance including cash savings

Mr M wishes to sponsor his wife and his two children from country Y. Currently Mr M receives £410.17 per week net income from employment, benefits and tax credits. Mr M has held a savings account for the last 18 months. He has provided bank statements for the period of 6 months prior to the date of application. The balance of the savings account has increased over that period from £2,345.52 to £2,500.

a) Calculation of current total weekly income (**A**):

Cash savings: for Mr M's savings account a figure of £2,345.52 can be taken into account as this is the lowest level of cash savings held for the 6-month period prior to the date of application. £2,345.52 divided by 143 weeks = £16.40 per week that can be added to the weekly net income.

Income source	Interval received	Equivalent weekly amount
Net income from employment (after deduction of income tax and NI contributions)	Weekly	£111.30
Working Tax Credit	£364.71 every four weeks Divided by 4 =	£91.18
Child Benefit	£134.80 every four weeks Divided by 4 =	£33.70
Child Tax Credit	Weekly	£93.99
Housing Benefit	Weekly	£80.00
Cash savings	Weekly	£16.40
<b>Total Income (A)</b>		<b>£426.57</b>

b) Calculation of current weekly housing costs (**B**):

Mr M's rental accommodation costs £150 per week. The family do not have to pay Council Tax.

Housing Costs	Interval paid	Equivalent weekly amount
Rent	Weekly	£150.00
Council Tax	£0.00	£0.00
<b>Total housing costs (B)</b>		<b>£150.00</b>

c) Deduction of weekly housing costs from the weekly net income:

Net income **£426.57** minus housing costs **£150** = **£276.57**

d) Calculation of income the family would receive if in receipt of Income Support (**C**):

An equivalent sized British family could receive the following Income Support:

Element	Interval	Amount
Income Support Rate for a couple	Weekly	£113.70
Each dependant child from birth to age 20 £66.33 x 2	Weekly	£132.66
Family premium	Weekly	£17.45
<b>Total Income Support (C)</b>		<b>£263.81</b>

e) Compare the weekly net income less weekly housing costs to the equivalent Income Support figure:

**(A – B) £276.57** must be greater or equal to **(C) £263.81**

In this example **A minus B** is greater than **C** so the weekly net income less weekly housing costs is more than the weekly level of Income Support a British family of that size would be entitled to receive and therefore the 'adequate' maintenance requirement is met.

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## 4. Income

### 4.1. Permitted income sources

The following sources of income of the applicant (in respect of employment or self-employment, only if they are in the UK with permission to work) or (as appropriate) their partner, parent, parent's partner or other sponsor can be counted where an application under [Appendix FM](#) has to meet the adequate maintenance requirement:

- Income from salaried or non-salaried employment.
- Non-employment income, e.g. property rental or dividends from shares.
- Income from Working Tax Credit, Child Tax Credit, Child Benefit, income-related benefits, contributory benefits and benefits/pensions payable to Armed Forces veterans and their partner.
- Cash savings held for at least 6 months prior to the date of application.
- State (UK or foreign) or private pension.
- Income from self-employment and income as a director of a specified limited company in the UK.

### 4.2. Income sources not permitted

The following sources of income cannot be counted where an application under [Appendix FM](#) has to meet the adequate maintenance requirement:

- Third party support.

Financial support from a third party support cannot be counted, except where permitted under paragraph 1(b) of [Appendix FM-SE](#) (e.g. a gift of cash savings which have now been held by the applicant/sponsor for at least 6 months by the date of application and are under their control; alimony or maintenance payments from a former partner; or an academic maintenance grant or stipend). Promises of support from a third party cannot be counted as they are vulnerable to a change in that person's circumstances or in the applicant's and/or sponsor's relationship with them.

### 4.3. Combining income sources

Under paragraph 12B of [Appendix FM-SE](#), all forms of permitted income (including from self-employment income) and cash savings can be combined to meet the adequate maintenance requirement, providing that the decision maker is content they are lawfully derived and the specified evidence rules are met where those apply.

## 5. Evidential requirements

### 5.1. General

In evidencing adequate maintenance under [Appendix FM](#) the general provisions in paragraph 1 of [Appendix FM-SE](#) apply. These include requirements as to the format of bank statements, payslips and other evidence and general requirements as to how certain income (including cash income) will be treated. Paragraph 12 of [Appendix FM-SE](#) applies where a partner or child applicant under Appendix FM seeks to rely on the fact that their sponsor is in receipt of a specified benefit to exempt the applicant from the requirement to meet the minimum income threshold and mean that they have to meet an adequate maintenance requirement instead.

Paragraph 12A of [Appendix FM-SE](#) applies to all applications under Appendix FM where an adequate maintenance requirement is to be met. It applies the specified evidence requirements of paragraphs 2 to 12 of [Appendix FM-SE](#) for employment, self-employment and other income and for cash savings to the extent and in the manner specified in paragraph 12A.

### 5.2. Evidence to prove exemption from minimum income requirement (partner and child of a partner applicants only)

Under paragraph 12 of [Appendix FM-SE](#), if the sponsor is in receipt of one the specified benefits or allowances listed in paragraph 2.1.2 above, the following evidence must be provided:

- a) Official documentation from the Department for Work and Pensions or Veterans Agency confirming the current entitlement and the amount currently received.
- b) At least one personal bank statement in the 12 month period prior to the date of application showing payment of the amount of the benefit or allowance to which the person is currently entitled into their account.

### 5.3. Earnings from employment (all adequate maintenance applications under Appendix FM)

Under paragraph 12A(a) of Appendix FM-SE, where income from current employment in the UK is relied upon, the following must be provided:

- a) A letter from the employer confirming the employment, the gross annual salary/income and the annual salary/income after income tax and National Insurance contributions have been paid, how long the employment has been held, and the type of employment (permanent, fixed-term contract or agency).
- b) Payslips covering the period of 6 months prior to the date of application or such shorter period as the current employment has been held.
- c) Personal bank statements covering the same period as the payslips, showing that the salary/income has been paid into an account in the name of the person or in the name of the person and their partner jointly.

Paragraph 18 of [Appendix FM-SE](#), sets out additional provisions relevant to the calculation of employment income under paragraph 12A.

### 5.3.1. Statutory or Contractual Maternity, Paternity, Adoption and Sick Pay

Where statutory or contractual maternity, paternity or adoption pay in the UK are relied upon, the evidential requirements in paragraph 5(b)(i) and (c) of [Appendix FM-SE](#) apply.

Where statutory or contractual sick pay in the UK is relied upon, the evidential requirements in paragraph 6(b)(i) and (c) of [Appendix FM-SE](#) apply.

## 5.4. Earnings from self-employment

Where income from self-employment in the UK as a sole trader, partner or in a franchise is relied upon, the evidential requirements in paragraphs 7 and 19 of [Appendix FM-SE](#) apply.

Where income from employment and/or shares in a limited company based in the UK of the type specified in paragraph 9(a) of [Appendix FM-SE](#) is relied upon, the evidential requirements of paragraph 9 of [Appendix FM-SE](#) apply.

Paragraph 19 of [Appendix FM-SE](#) sets out additional provisions relevant to the calculation under paragraph 12A of self-employment income and of income from employment and/or shares in a limited company based in the UK of the type specified in paragraph 9(a) of [Appendix FM-SE](#).

## 5.5. Non-employment income

Where non-employment income is relied upon, the evidential requirements of paragraph 10 of [Appendix FM-SE](#) apply. The reference in paragraph 10(f) to the evidence required to verify the receipt of a benefit applies to all UK welfare benefits and tax credits for the purposes of assessing adequate maintenance and evidence can thus come from either HMRC or DWP.

Paragraph 20 of [Appendix FM-SE](#) sets out additional provisions, relevant to the calculation of non-employment income under paragraph 12A.

## 5.6. Cash savings

Where cash savings are relied upon, the evidential and other requirements in paragraphs 11 and 11A of [Appendix FM-SE](#) apply.

Under paragraph 11 the following must be provided:

- (a) Personal bank statements showing that at least the level of cash savings relied upon in the application has been held in an account(s) in the name of the person or of the person and their partner jointly throughout the period of 6 months prior to the date of application.
- (b) A declaration by the account holder(s) of the source(s) of the cash savings.

Under paragraph 11A cash savings can be held in any form of bank/savings account which allows immediate access to the funds (with or without a penalty for withdrawing funds without notice). Paragraph 11A also sets out other requirements as to the funds which may be

counted as cash savings, including as to the scope for them to be derived from the transfer of investments or from the sale of property within the period of 6 months prior to the date of application.

## 5.7. Housing costs

Under paragraph 12(f) of Appendix FM-SE, the applicant must provide evidence of the monthly (or weekly) housing and Council Tax costs for the accommodation in the UK in which the applicant (and any other family members who are or will be part of the same household) lives or will live if the application is granted.

As the calculations at Section 3 above refer to a weekly housing cost, any costs evidenced which are not weekly should be converted to a weekly figure, rounding down when this leads to a part of a penny.

Example:

If a calendar monthly Council Tax figure is evidenced, then multiply it by 12 and divide by 52 to arrive at the weekly equivalent.

Monthly Council Tax = £100 x12 divided by 52 = £23.07 weekly equivalent cost of Council Tax.

Applicants should supply documentary evidence of rent or mortgage payments and Council Tax, along the lines of:

- a) A letter from the landlord or mortgage provider detailing the weekly or monthly rental or mortgage cost of the property;
- b) At least one personal bank statement to show the rent/mortgage payment leaving the account of the sponsor, their partner or the couple jointly;
- c) Rent book (if available);
- d) Letter from the local authority detailing whether and how much Council Tax is payable.

## 5.8. Adult dependent relatives

Under paragraph 12(g) of Appendix FM-SE, where the applicant is an adult dependent relative applying for entry clearance, the applicant must in addition provide details of the care arrangements in the UK planned for them by their sponsor (which can involve other family members in the UK), of the cost of these arrangements and of how that cost will be met by the sponsor.

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## 6. Evidential flexibility

Under paragraph D of [Appendix FM-SE](#), there is scope for decision makers to pause their consideration of an application under [Appendix FM](#) and request the applicant to submit missing specified evidence or the correct version of it, within a reasonable deadline specified in the request, where the decision maker anticipates that addressing the error or omission will lead to the application being granted.

Decision makers are also able to grant an application despite minor evidential problems (but not where specified evidence is missing entirely).

There is also discretion for decision makers where evidence cannot be supplied because it is not issued in a particular country or has been permanently lost.

Decision makers have general discretion to request additional information or evidence before making a decision.

The provision for evidential flexibility is set out in full at paragraph D of [Appendix FM-SE](#).

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## 7. Conversion of foreign currency

Under paragraph 1(f) and (g) of Appendix FM-SE, income or cash savings in a foreign currency will be converted to pounds sterling (£) using the closing spot exchange rate which appears on [www.oanda.com](http://www.oanda.com) on the date of application. Where there is income or cash savings in different foreign currencies, each will be converted into pounds sterling (£) before being added together, and then added to any UK income or savings, to give a total amount.

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## 8. Accommodation

### 8.1. General

Applications under Appendix FM under a 5-year route to settlement as a partner, parent or dependent child, and applications under Appendix FM from an adult dependent relative, must meet a requirement for adequate accommodation.

An applicant under Appendix FM under a 5-year route to settlement as a partner, parent or dependent child must provide evidence that there will be adequate accommodation in the UK, without recourse to public funds, for the family, including other family members who are not included in the application but who live in the same household. This must be accommodation which the family own or which they occupy exclusively.

Accommodation for a couple may be prospective rather than available on arrival because the marriage or civil partnership has not yet taken place. The decision maker must be satisfied that adequate permanent accommodation will be available after the marriage or the civil partnership has taken place and that adequate temporary accommodation will be available in the meantime, e.g. provided by family or friends. Evidence relating to the temporary address and the proposed long term address after marriage or civil partnership should be provided with the entry clearance application as a fiancé(e) or proposed civil partner. An entry clearance application may be refused if the temporary or proposed long term address is not considered to be adequate accommodation. An application made after the marriage or civil partnership has taken place should not rely on prospective accommodation.

Accommodation is not adequate if it is not owned or legally occupied by the family unit.

Accommodation can be shared with others. 'Occupy exclusively' is defined in paragraph 6 of the Immigration Rules and means that at least part of the accommodation must be for the exclusive use of the family.

Decision makers should expect to see evidence that the family unit of the applicant/sponsor and any dependants have or will have exclusive use of at least the bedroom(s) required for the number, age and gender of members of the family unit (see section 8.4.3 below). The rest of the accommodation outside those areas which are for the exclusive use of the family unit can be shared with others. For example, the required number of bedrooms for the applicant/sponsor and their dependants may be in a home shared with and owned by the parents of the sponsor (and the parents have their own exclusive bedroom which they occupy).

Accommodation is not adequate if it is, or will be, overcrowded. Under paragraph 6 of the Immigration Rules, the meaning of overcrowded is the meaning in the Housing Act 1985, the Housing (Scotland) Act 1987 or the Housing (Northern Ireland) Order 1988 (as appropriate).

Accommodation is not adequate if it does or will contravene public health regulations.

### 8.2. Ownership/occupation

The applicant should provide evidence as to the basis on which the accommodation is or will be owned or occupied (including rented) by the family unit. This may for example be in the

form of a copy of the property deeds, a letter from a bank or building society as to the mortgage arrangements, a lease agreement and rent book, or a letter from a family member or friend who is making the accommodation available to the applicant and their family unit.

Where the accommodation is rented from a local authority or housing association, correspondence from them can normally be relied upon as sufficient evidence. Greater care needs to be taken in respect of a private tenancy. If there are any aspects of the accommodation arrangements which raise substantial doubts as to whether the requirements of the Immigration Rules are met, further evidence should be sought.

Where the accommodation is not 'owned' by the sponsor (in the sense that they are not the head of the household but, for example, are living with their parents or are living alongside other tenants in a house in multiple occupation), the Rules require there to be adequate accommodation which the sponsor and any partner and dependants will 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 in the property, the number of occupants and whether this is only intended to be a short-term arrangement.

### 8.3. Housing standards

Local authorities have the power to set the housing standards that must be met in their area. While it will not generally be necessary to approach the local authority in each case to see whether their standards are met, the applicant should provide sufficient evidence that the accommodation will be adequate. This may take the form for example of a letter from a housing authority or building society or a description of the property that the decision maker can be satisfied is accurate and genuine.

### 8.4. Definition of overcrowding

In England and Wales, under the Housing Act 1985 if either **the room standard** and/or **the space standard** is breached a dwelling will be regarded as **overcrowded** under the Act.

The overcrowding definition covers privately owned homes and those owned by local authorities.

#### 8.4.1. The room standard

The room standard is contravened under the Act when the number of persons sleeping in a dwelling and the number of rooms available as sleeping accommodation is such that two persons aged 10 or over of the opposite sex who are not living together as a couple must sleep in the same room.

#### 8.4.2. The space standard

The space standard is contravened when the number of persons sleeping in a dwelling is in excess of the permitted number, having regard to the number and floor area of the rooms of the dwelling available as sleeping accommodation.

For immigration purposes we do not look at the floor area for each room as it is complex to evidence and assess. We focus on the number of permitted occupants based on the number of rooms.

### 8.4.3 Method of assessing whether accommodation is overcrowded

#### 1. Count the number of people who would be occupying the accommodation.

This includes everyone who would be occupying the house, including those who are not parties to the application for leave. Children under one year old are not counted; children aged between one and 10 are counted as a half.

#### 2. Count the number of rooms available as sleeping accommodation.

When counting the number of rooms to assess whether a property is or will be overcrowded, the decision maker should look at how the sleeping arrangements within the premises *could* be organised rather than at how they are currently organised. In practice, this means counting the number of rooms that are bedrooms or are living rooms which could be used as a bedroom. Bathrooms and kitchens should not be counted as sleeping accommodation.

Rooms of less than 50 square feet are not counted.

#### 3. Compare the number of people who would be occupying the accommodation with the number of rooms available as sleeping accommodation to assess whether it would be overcrowded.

The following table represents what would, subject to their age, gender and whether they are a couple, be an acceptable maximum number of people to occupy a house with the relevant number of rooms available as sleeping accommodation:

Number of rooms in the accommodation available for sleeping	Number of people permitted to sleep in the accommodation without it being overcrowded
1	2
2	3
3	5
4	7.5
5	10
More than 5 rooms	10 plus an additional 2 persons for each room in excess of 5 rooms  e.g 6 rooms = 12 people,  7 rooms = 14 people.

Additionally, the decision maker should consider whether there are an acceptable number of rooms available as sleeping accommodation to accommodate those who must have a separate bedroom (as set out in section 8.4.1.). The decision maker does not have to go on to consider this issue if they have already assessed the accommodation as overcrowded based on the above table.

### **Example A**

The accommodation has 1 room available as sleeping accommodation. The house would be occupied by a couple, and one child aged 5. The housing is overcrowded and therefore does not provide adequate accommodation under the Immigration Rules because only 2 people are permitted to sleep in the property without it being overcrowded whereas 2.5 people wish to sleep there.

### **Example B**

The sponsor rents a one bedroom flat with a living room. There are two rooms available for sleeping. His wife wishes to join him in the UK. The housing is not overcrowded as up to 3 people are permitted to sleep at the property without it being overcrowded.

## **Houses in multiple occupation**

A house in multiple occupation (HMO) is defined as “a house which is occupied by persons who do not form a single household”. This covers hotels and hostels, as well as houses lived in by two or more family units or by a couple (and their dependent children) living with the parents or other family members of one of them.

There are separate overcrowding provisions for HMOs. Local authorities have the power to serve an overcrowding notice in relation to a HMO specifying the maximum number of people permitted in the house or preventing any further residents. Where an overcrowding notice renders an occupant homeless, the local authority may be obliged to provide them with accommodation under the Housing Act 1985, e.g. if they have dependent children or are old or infirm. Such accommodation would count as recourse to public funds under the Immigration Rules. In the case of HMOs, it may be necessary for the decision maker to obtain written confirmation from the local authority that there is no objection to an additional resident moving in.

### **8.4.4 When is overcrowding allowed?**

Overcrowding is only allowed if it is:

- due to a new-born child or a child who has just turned one of the specified ages above and alternative accommodation arrangements have not yet been made.
- temporary, e.g. if a member of the family comes to live in the home for a short time.
- licensed overcrowding, where the local authority has given permission.

### **8.4.5 Public health regulations**

It is likely to be rare that the property contravenes public health regulations. However, if the decision maker has satisfactory evidence that that is or will be the case, they may determine that the accommodation is not adequate.

## 9. Refusal wording

**Where an applicant fails to provide evidence, including specified evidence, that there will be 'adequate' maintenance, the following wording must be used in refusal notices and letters:**

You have failed to evidence that there will be 'adequate' maintenance for yourself, your partner/sponsor and any dependants without recourse to public funds.

The calculation below sets out your net income after housing costs have been deducted. These figures demonstrate that your net income after accommodation costs have been deducted is less than the level a family of that size would be entitled to under Income Support.

The following formula has been used to calculate the income available to maintain you and your partner and any dependants in the UK, taking into account your projected income and your accommodation costs:

$$A - B \geq C$$

**A** minus **B** is greater than or equal to **C**.

Where:

**A** is net income (after deduction of income tax and National Insurance contributions);  
**B** is housing costs (i.e. what needs to be spent on accommodation); and  
**C** is the amount of Income Support that would be received by a British family of equivalent size.

### INCOME CALCULATION

Income source	Interval received	Equivalent weekly amount
TOTAL INCOME		

### HOUSING COSTS

Housing Costs	Interval paid	Equivalent weekly amount
Rent or mortgage		

Council Tax		
Total housing costs		

### INCOME SUPPORT EQUIVALENT CALCULATION

Element	Interval	Amount

Using the figures provided in your application, as listed above, the formula has been completed as follows:

A (insert figure showing weekly net income) – B (insert figure showing weekly housing costs)  
= (insert sum of two previous figures)

In order to meet the requirement of adequate maintenance, your net weekly income after housing costs have been deducted which is (insert A minus B) must be greater than or equal to (insert figure from Income Support equivalent calculation). From the evidence provided, it appears that your income is less than the level of Income Support that a British family of equivalent size would be entitled to. The adequate maintenance requirement for you and your partner/sponsor (and any dependants) is not met. (Move to wording for the particular route below).

**If the refusal is based on missing specified evidence, use this wording:**

You have suggested you/you and your partner/ your sponsor receive(s) a weekly income/have housing costs of (xxx.xx). However, you have not provided the specified evidence, as required under Appendix FM-SE, to demonstrate that this income/housing cost is received/charged as claimed. Specifically, you have not provided (*list missing evidence*)

*Then use the wording below which applies to the application type.*

**If the refusal is based on not having provided evidence of adequate accommodation, use this wording:**

Accommodation will not be regarded as adequate if it is, or will be, overcrowded within, under paragraph 6 of the Immigration Rules, the meaning of the Housing Act 1985, the Housing (Scotland) Act 1987 or the Housing (Northern Ireland) Order 1988 (as appropriate).

Accommodation will also not be regarded as adequate if it contravenes public health regulations. You have not provided sufficient evidence that the accommodation in which you reside or intend to reside meets the requirements set out above. This is because (*insert reasons*).

*Then use the wording below which applies to the application type.*

**Partner applying for entry clearance or leave to remain as a partner (on a 5-year route to settlement under Appendix FM) whose partner is in receipt of a specified benefit:**

Entry Clearance

- You have therefore failed to meet the requirement contained at paragraphs E-ECP.3.1.(c) and E-ECP.3.3. of Appendix FM.

Leave to remain

- You have therefore failed to meet the requirement contained at paragraphs E-LTRP.3.1.(c) and E-LTRP.3.3. of Appendix FM.

**Child applying for entry clearance or leave to remain under Appendix FM where the applicant's parent's partner is in receipt of a specified benefit:**

Entry clearance

- You have therefore failed to meet the requirement contained at paragraphs E-ECC.2.1.(c) and E-ECC.2.3. of Appendix FM.

Leave to remain

- You have therefore failed to meet the requirement contained at paragraphs E-LTRC.2.1.(c) and E-LTRC.2.3. of Appendix FM.

**Child applying for entry clearance or leave to remain under Appendix FM as the child of a person applying for entry clearance or leave to remain as a parent. (on a 5-year route to settlement)**

Entry clearance

- You have therefore failed to meet the requirement contained at paragraph E-ECC.2.3.A of Appendix FM.

Leave to remain

- You have therefore failed to meet the requirement contained at paragraph E-LTRC.2.3.A of Appendix FM.

**Parent applying for entry clearance or leave to remain as the parent of a child in the UK (on a 5-year route to settlement under Appendix FM):**

Entry clearance

- You have therefore failed to meet the requirement contained at paragraph E-ECPT.3.1. of Appendix FM.

Leave to remain

- You have therefore failed to meet the requirement contained at paragraph E-LTRPT.4.1. of Appendix FM.

**Adult dependent relative applying under Appendix FM for Indefinite Leave to Enter (or applying for limited leave where the sponsor is in the UK with limited leave as a refugee or via humanitarian protection or adult dependent relatives with limited leave applying for indefinite leave to remain where the refugee/HP sponsor is now settled):**

Entry clearance

- You have therefore failed to meet the requirement contained at paragraph E-ECDR.3.1. of Appendix FM.

Leave to remain/Indefinite leave to remain

- You have therefore failed to meet the requirement contained at paragraph E-ILRDR.1.4. of Appendix FM.

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## 10. Contact for further information

This guidance is owned by the Family Policy Team.

Any queries should be directed to [FamilyOpsPolicy@homeoffice.gsi.gov.uk](mailto:FamilyOpsPolicy@homeoffice.gsi.gov.uk)

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