

CONSULTATION RESPONSE: Appendix A – survey responses

Law Commission: Simplification of the Immigration Rules

1. Responses to our online survey

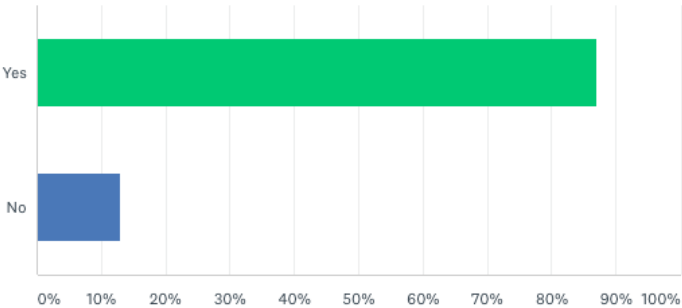
Q1

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Do you agree with the principles the Law Commission have identified to underpin the drafting of the Immigration Rules? Namely (1) suitability for the target audience; (2) comprehensiveness; (3) accuracy; (4) accessibility; (5) consistency; (6) durability (making the rules apt for amendments); and (7) capacity for presentation in a digital form.

Answered: 31   Skipped: 0



ANSWER CHOICES	RESPONSES
Yes	87.10% 27
No	12.90% 4
TOTAL	31

[Comments](#) (5)

Q2

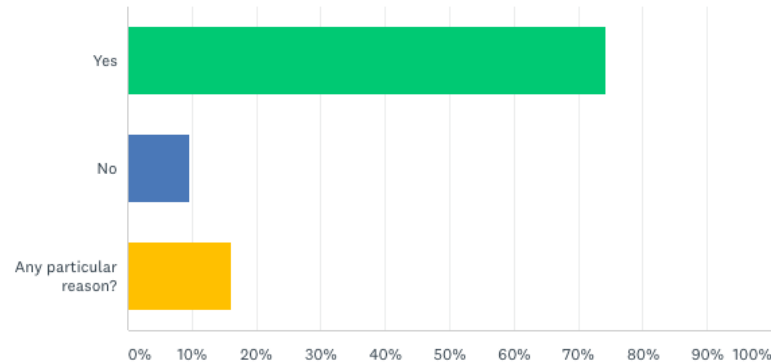


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The Law Commission provisionally considers that the Immigration Rules should be drafted so as to be accessible to a non-expert user. Do you agree?

Answered: 31 Skipped: 0



ANSWER CHOICES	RESPONSES	
▼ Yes	74.19%	23
▼ No	9.68%	3
▼ Any particular reason?	<a href="#">Responses</a> 16.13%	5
TOTAL		31

Q3

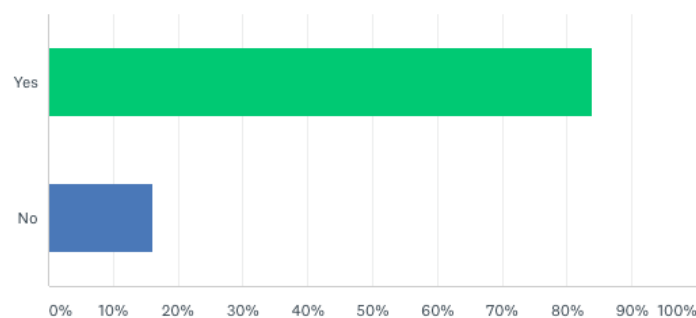


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Is the length of the Immigration Rules is a worthwhile price to pay for the benefits of transparency and clarity?

Answered: 31 Skipped: 0

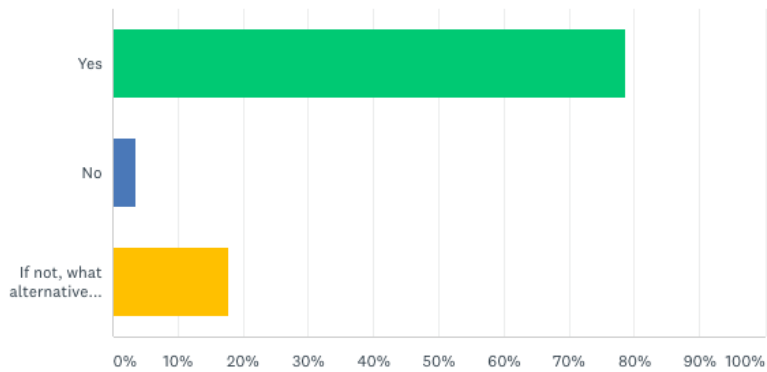


ANSWER CHOICES	RESPONSES	
▼ Yes	83.87%	26
▼ No	16.13%	5
TOTAL		31

[Comments \(11\)](#)

Do you agree with the Law Commission's proposed division of subject-matter at p.106 of the consultation document?

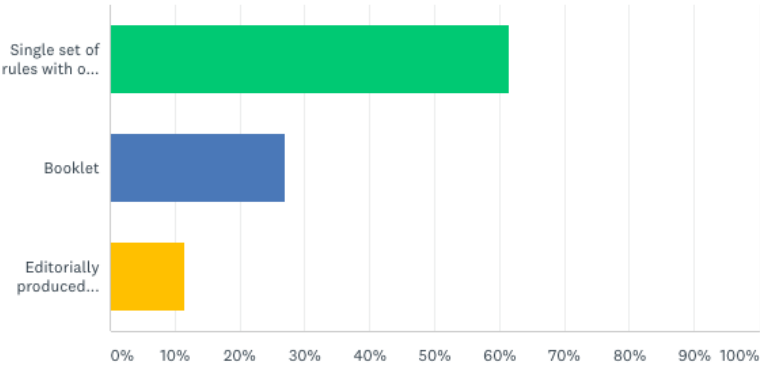
Answered: 28   Skipped: 3



ANSWER CHOICES	RESPONSES	
▼ Yes	78.57%	22
▼ No	3.57%	1
▼ If not, what alternative systems of organisation would be preferable?	<a href="#">Responses</a> 17.86%	5
TOTAL		28

Which of the Law Commission's proposals at page 108 of the consultation document of: (a) a single set of rules with one set of common provisions), (b) booklet, or (c) editorially produced booklet do you prefer?

Answered: 26    Skipped: 5

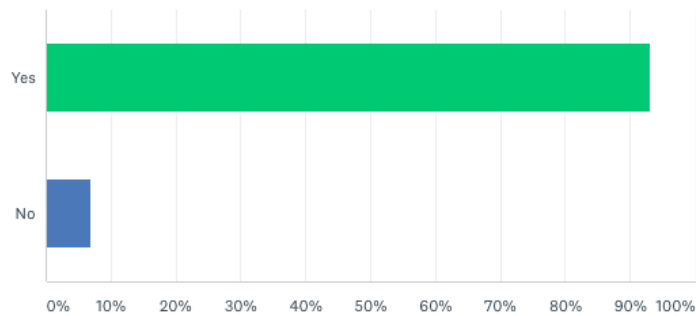


ANSWER CHOICES	RESPONSES	
▼ Single set of rules with one set of common provisions	61.54%	16
▼ Booklet	26.92%	7
▼ Editorially produced booklet	11.54%	3
TOTAL		26

[Comments \(9\)](#)

The Law Commission provisionally proposes the following numbering system for the Immigration Rules: (1) paragraphs should be numbered in a numerical sequence; (2) the numbering should re-start in each Part; (3) it should be possible to identify from the numbering system the Part within which a paragraph falls, the use of multilevel numbering commencing with the Part number; (4) the numbering system should descend to three levels (1.1.1 and so on) with the middle number identifying a section within a Part; and (5) letters should be used for sub-paragraphs and lower case Roman numerals for sub-sub-paragraphs. Do you agree?

Answered: 29   Skipped: 2



ANSWER CHOICES	RESPONSES	
Yes	93.10%	27
No	6.90%	2
TOTAL		29

[Comments \(2\)](#)

Q7

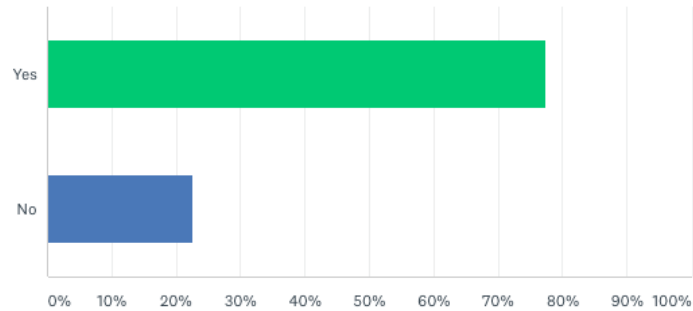


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The Law Commission provisionally proposes that definitions should not be used in the Immigration Rules as a vehicle for importing requirements. Do you agree?

Answered: 31 Skipped: 0



ANSWER CHOICES	RESPONSES	
▼ Yes	77.42%	24
▼ No	22.58%	7
TOTAL		31

[Comments \(6\)](#)

Q8

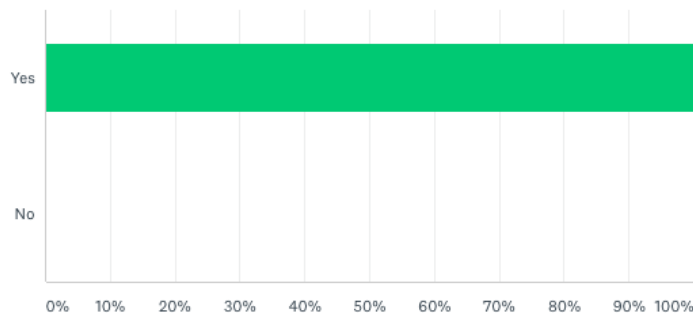


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The Law Commission provisionally proposes that, where possible, paragraphs of the Immigration Rules: (1) should be self-standing, avoiding cross-reference to other paragraphs unless strictly necessary; and (2) should state directly what they intend to achieve. Do you agree?

Answered: 30 Skipped: 1



ANSWER CHOICES	RESPONSES	
▼ Yes	100.00%	30
▼ No	0.00%	0
TOTAL		30

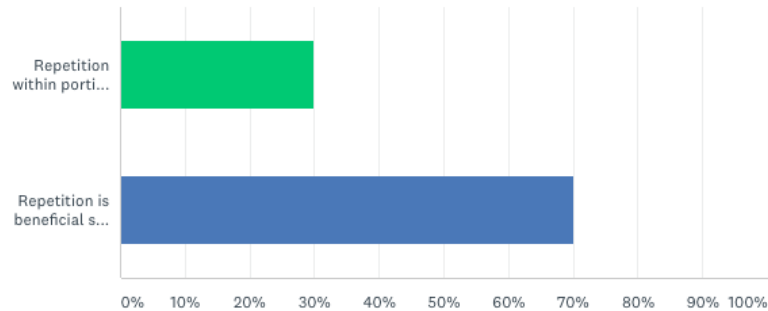
[Comments \(1\)](#)

Q9

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The Law Commission asks whether repetition within portions of the Immigration Rules should be eliminated as far as possible, or whether repetition is beneficial so that applicants do not need to cross-refer.

Answered: 30 Skipped: 1



ANSWER CHOICES	RESPONSES
▼ Repetition within portions of the Immigration Rules should be eliminated as far as possible	30.00% 9
▼ Repetition is beneficial so that applicants do not need to cross-refer	70.00% 21
TOTAL	30

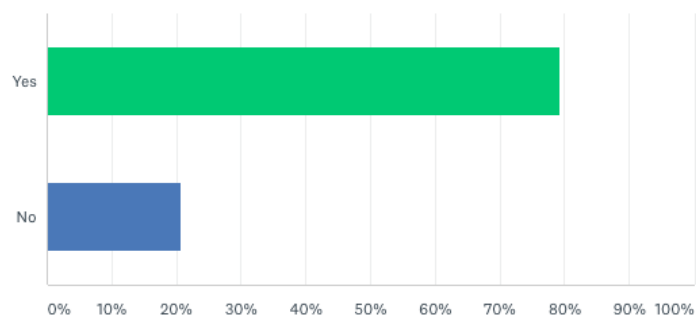
[Comments \(7\)](#)

Q10

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Do you agree that Appendix F (Archived Immigration Rules) and paragraphs 276DI to 276AI in Part 7 (Other categories) can be omitted from any redrafted Immigration Rules?

Answered: 29 Skipped: 2



ANSWER CHOICES	RESPONSES
▼ Yes	79.31% 23
▼ No	20.69% 6
TOTAL	29

[Comments \(8\)](#)

## 2. Longer answer question responses

## **Respondent A**

I think the 'proposed division of subject-matter' at 8.10 of the Consultation Paper, along with the Table of Destinations at Appendix 5, is a pretty good attempt at re-organising the Rules. The examples they give of re-arranging Part 9 and Appendix FM are a big improvement on the current layout. I also agree that what goes into the Appendices (and into the Definitions) should just be lists, and should not be used for importing requirements into the Rules, like the current Appendix A.

The most important change, however, would be a move away from prescription to discretion, particularly as regards the evidence needed to satisfy the requirements of the Rules. A move back to something like "adequate" maintenance in Part 8, and away from the enormously complicated means of satisfying the financial requirement in Appendices FM and FM-SE, would be great. This would obviously confer greater discretion on decision-makers, who might well derive more satisfaction from their jobs in consequence. But this would have to be balanced by an adequate system of appealing to an independent tribunal against their decisions. It is not easy to restore rights of appeal once they have been taken away, but it has happened in the past, e.g. when appeals for family visitors were restored by New Labour in 1997.

That really would be a fundamental reform of the Immigration Rules, as opposed to tinkering around the edges, which a lot of the Commission's proposals necessarily are.

### *Respondent A after reading the draft of the consultation response*

I note that the majority of members are not in favour of more discretion and less prescription in the Immigration Rules, considering that this would give even more scope for bad decision-making by caseworkers, with even less opportunity for correcting those bad decisions. That is a powerful argument. But unless the Rules do allow more scope for discretion – perhaps "evaluation" would be a better term – there is little chance of making the Rules significantly shorter and simpler.

Ideally, one would like to go back to the state of affairs before the Points Based System was introduced in 2008 when, for example, the Rules just required maintenance to be "adequate", without specifying in awesome detail what documents were needed to prove adequacy. Entry clearance officers and Home Office caseworkers just had to decide on the evidence before them whether the applicant could be adequately maintained, with Income Support as a judge-made benchmark of minimum adequacy. Of course, in those days there were full rights of appeal to adjudicators and the Immigration Appeal Tribunal, enabling bad decisions to be challenged before an independent body. The elaboration and expansion of the Rules which followed upon the introduction of the PBS went in tandem with the reduction in appeal rights, until now there is not even a right of appeal on the ground that the respondent's decision is not in accordance with immigration rules.

So ILPA members fear that a return to the kind of rules we had before the PBS and A/vi, but without the corrective of an appeal to the Tribunal, would make matters worse for applicants. A resurrection of appeal rights cannot be expected from the present



Government. So what to do? If ILPA members want Home Office caseworkers to be given detailed instructions as to how they are to assess applications, so as to avoid arbitrariness and inconsistency – in other words, box-ticking as originally envisaged when the PBS was introduced, before subjective evaluation was brought in by the genuineness tests, etc. – then the Immigration Rules will have to stay much as they are. Improvements can certainly be made to the way the Rules are arranged, to the numbering system, and so on. The Law Commission has certainly made lots of useful suggestions as to how the Rules can be made easier to understand and find one's way around. But if we insist on prescription rather than evaluation, no fundamental change is possible.

## **Respondent B**

### **Complexity and change in the Rules**

1. To what extent do you think that complexity in the Immigration Rules increases the number of mistakes made by applicants?

*The complexity greatly increases the number of mistakes made by applicants particularly where applicants are required to navigate to different sections of the rules/different appendices and check different exemptions. It is very easy for an applicant to think that they have checked the relevant section of the Immigration Rules but to be unaware that another section would also apply to them.*

2. The Law Commission seeks views on the correctness of the analysis set out in chapter 5 of recent causes of increased length and complexity in the Immigration Rules.

*The analysis seems to be correct. However, a wider point would be that the complexity and length of the rules helps to reduce the numbers of successful applications in certain categories and allows caseworkers more opportunities to refuse applications. This may be an end in itself, reducing the number of successful immigration applications from certain categories. For instance, the Adult Dependant Relative (ADR) category is now extremely complex and only a few hundred applications are successful per year. This complexity therefore reduces the successful applications under this route. However, it can be said the ADR route is still open, it is simply so complex it may as well be closed.*

3. The Law Commission seeks views on whether our example of successive changes in the detail of evidentiary requirements in paragraph 10 of Appendix FM-SE is illustrative of the way in which prescription can generate complexity.

*Yes this is a good example. This route effectively requires specialist help for all but the simplest of applications. The complexity required to demonstrate the employment of settled workers in the Tier 1 (Entrepreneur) route is also a good example.*

4. Are there other examples in the Immigration Rules where the underlying immigration objective has stayed the same, but evidentiary details have changed often, aside from Appendix FM-SE?

***ADR (as discussed above) and Appendix FM are the strongest examples.***

#### **Discretion vs Prescription**

5. What areas of the Immigration Rules might benefit from being less prescriptive, having regard to the likelihood that less prescription means more uncertainty.

***There is great uneasiness about the Rules being less prescriptive. Although the Report makes clear there would need to be a greater investment in caseworker training if the Immigration Rules were less prescriptive, where the Immigration Rules are currently less prescriptive the decisions from caseworkers are generally of a poor quality.***

***Examples of this include decisions on whether a Tier 1 (Entrepreneur) applicant is a 'genuine entrepreneur' (which involves caseworkers reviewing business plans despite not have a business background) and visit visa applications where applicants are refused on extremely spurious grounds. The level of training would have to be greatly increased for there to be confidence that less prescription would lead to good-quality and lawful decisions, and there should also be more ways to challenge caseworker decisions (for instance, an Administrative Review option for visit visa refusals).***

***Having said that, less prescription would be helpful in Appendix FM and the ADR route. In addition, the Tier 1 (Entrepreneur) route (especially for extensions) and Tier 2 sponsor licence applications would benefit from less prescription as much of the information required is often available from other sources (Companies House documents for instance). Further, if the background data check system used for Appendix EU applications was extended to other categories then further data could be obtained by the caseworkers rather than the applicant having to provide it, such as PAYE records of the settled workers in a Tier 1 (Entrepreneur) extension application.***

6. Do you see any difficulties with the form of words used in the New Zealand operation manual that a requirement should be demonstrated "to the satisfaction of the decision-maker"?

***'To the satisfaction of the decision maker' leaves too much room for speculation. An applicant is not to know what a decision maker is expecting to see unless they then read the guidance for caseworkers along with the Immigration Rules/Guidance. In addition, will decision makers all work to the same guidelines (if so these should be published) or will a decision be left to the discretion of each case worker?***

7. Should the Immigration Rules be less prescriptive as to evidential requirements (assuming that there is no policy that only specific evidence or a specific document will suffice)?

***The Immigration Rules would benefit from having less prescriptive evidential requirements however, where no specific documents are specified, it would be useful to have additional guidance on the type of document that an applicant would be expected to submit.***

***Appendix V is a good example of this. Applicants are required to satisfy the decision maker that they will leave the UK at the end of their visit, however there is no further guidance within the Immigration Rules regarding how an applicant should do this. The vast majority of refusals that we see are due to the decision maker not being satisfied that an applicant meets this requirement. Many individuals applying alone may think that if they have purchased a return ticket, this should be sufficient to show their intention to return home when in reality, the Home Office would expect to see much more than this such as evidence of work and family ties in their home country. It would be useful for the Immigration Rules to be clear on the type of evidence that is expected where mandatory documents are not specified.***

8. Do you consider that the discretionary elements within Appendix EU and Appendix V (Visitors) have worked well in practice?

***As above, the discretionary elements within Appendix V have many faults and lead to many poor-quality decisions which cannot be challenged. In subsequent applications a great deal of evidence must be submitted to convince the caseworker that the first decision should not be upheld.***

***In contrast, the discretionary elements within Appendix EU works extremely well. This may be because of the more straightforward application requirements (essentially residence) and because more complex cases (Surrinder Singh etc) have not yet been tested.***

9. The Law Commission's analysis suggests that, in deciding whether a particular provision in the Immigration Rules should be less prescriptive, the Home Office should consider: (1) the nature and frequency of changes made to that provision for a reason other than a change in the underlying policy; (2) whether the provision relates to a matter best left to the judgement of officials, whether on their own or assisted by extrinsic guidance or other materials. Do you agree?

***I agree to a certain extent but think that in deciding whether to make a provision in the Immigration Rules less prescriptive, the Home Office should also take into account who the Immigration Rules will be used by.***

**Layout of the Rules**

10. Do you agree with the Law Commission's provisional proposal that the following principles should be applied to titles and subheadings in the Immigration Rules:

- a. there should be one title, not a title and a subtitle;
- b. the titles given in the Index and the Rules should be consistent;
- c. titles and subheadings should give as full an explanation of the contents as possible, consistently with keeping them reasonably short;
- d. titles and subheadings should not run into a second line unless necessary; and
- e. titles and subheadings should avoid initials and acronyms.

***I agree that titles should be consistent and clear but I do not think that subtitles should be removed or that titles should not run over more than one line. If a title would be clearer if it ran over more than one line, I do not think that this would be an issue and it would be more beneficial than having an unclear title.***

11. Should more, the same, less, or no use be made of subheadings within the Rules?

***I think that subheadings make the rules easier to navigate and do not think that these are a problem.***

12. Do you have a preference between overviews and tables of contents at the beginning of Parts? Do you consider that tables of contents or overviews at the beginning of Parts of the Immigration Rules would aid accessibility? If so, would it be worthwhile to include a statement that the overview is not an aid to interpretation?

***Whilst a table of contents could be useful in assisting individuals to quickly navigate the rules, an overview may result in further complicating the rules. If clear titles are used and contents tables are comprehensive, then an overview should not be required.***

## **Definitions**

13. The Law Commission provisionally proposes that definitions should not be used in the Immigration Rules as a vehicle for importing requirements. Do you agree? Either way, please give reasons.

***I agree. Having a definitions section is helpful, but to import requirements into such definitions complicates the requirements to be met and may confuse applicants. A good example is the update of the term 'professional sportsperson'. This term has been broadened enormously, and as many individuals cannot undertake work as a professional sportsperson, means many individuals may technically be in breach of their leave. This is also an example of poor drafting as the Home Office seem unaware of the far-reaching consequences of this term.***

## **Overall drafting style**

14. Is the general approach to drafting followed in the specimen redrafts at appendices 3 and 4 to the consultation paper successful?

***Appendix 4 would make appendix FM easier to follow however, based on the redraft, there could be some confusion regarding which requirements are to be met by those applying for leave to enter and which are to be met by those applying for leave to remain. It would be easier for applicants if this was highlighted.***

15. Which aspects of the redrafts of Part 9 (Grounds for refusal) and of a section of Appendix FM (Family members) to the Immigration Rules work well, and what can be improved?

***As per the above.***

### **Archive of the Immigration Rules**

16. Is the current method of archiving sufficient? Would it become sufficient if dates of commencement were contained in the Immigration Rules themselves, or is a more sophisticated archiving system required?

***The current system of archiving the Immigration Rules works better than archiving many of the guidance documents. However, as the Immigration Rules are only saved as one document, without hyperlinks to navigate the document, it does make the archiving unwieldy which could be improved.***

### **Guidance**

17. To what extent is guidance helpfully published, presented and updated?

***Guidance is often pivotal for applicants in order to make some sense of the Immigration Rules. It can also help practitioners highlight points to the client. As the Report set out, better highlighting of the changes from the previous guidance document would be helpful, and if the caseworker has discretion, highlighting what they would take into account would also be of use.***

18. Can guidance be more clearly linked to the relevant Immigration Rules and if so, how?

***The guidance is quite well linked already. There could be some further condensing (such as having one Appendix FM guidance document rather than several, in different and confusing formats) and having simpler Immigration Rules would hopefully lead to simpler guidance documents.***

19. Are there any instances where the guidance contradicts the Immigration Rules and any aspects of the guidance which cause particular problems in practice?

***Many of these have been picked up in the report. One aspect I would highlight is Tier 1 (Exceptional Talent).***

***Although Appendix L is within the Immigration Rules and highlights the criteria to be met for a Tier 1 (Exceptional Talent) endorsement, making an application for an endorsement is not an immigration application and the application is instead sent to the endorsing bodies. Therefore, the status of Appendix L is not clear.***

***Under paragraph 1(c) of Appendix L, Exceptional Talent applicants must satisfy 'at least one of the qualifying criteria'. This provision does not apply for paragraphs relating to Exceptional Promise applicants. However, the relevant Home Office Guidance confirms that those applying under the Exceptional Promise route do need to meet the qualifying criteria. It states that Exceptional Promise applicants must provide 'evidence in relation to at least one of the qualifying criteria'. This is also included in the Designated Competent Bodies' own Guidance. There is therefore some contradiction and meeting the qualifying criteria can be quite difficult.***

#### **Statements of Changes**

20. How can the effect of statements of changes to the Immigration Rules be made easier to assimilate and understand? Would a Keeling schedule assist? Should explanatory memoranda contain more detail as to the changes being made than they do currently, even if as a result they become less readable?

***The explanatory memorandum is generally easy to read and contains sufficient information to gain an overview of the changes.***

21. How can the temporal application of statements of changes to the Immigration Rules be made easier to ascertain and understand?

***It could be made clearer about each category that will be changed.***

22. What issues arise as a result of the frequency of changes to the Immigration Rules, and how might these be addressed?

***The frequency of changes often makes it difficult for applicants to plan for the future, particularly where changes are to come into force in the same month as the statement is published. Applicants may have read the rules a few months in advance of preparing their application in order to collate relevant documents or ensure that they meet the requirements but when they come to apply, they find that the rules have changed.***

23. Do you agree that there should be, at most, two major changes to the Immigration Rules per year, unless there is an urgent need for additional changes? Should these follow

the common commencement dates (April and October), or be issued according to a different cycle?

***I agree that unless an urgent change is needed to the Rules, there should be no more than two changes a year. I do not think that the date of the changes within the year matters providing that these remain consistent. If applicants are aware of when changes are likely to be published, they can plan accordingly.***

#### **Application forms and process**

24. To what extent are application forms accessible? Could the process of application be improved?

***Application forms are easily accessible if applicants have online access. However, the relevant forms can often be difficult to find and to my knowledge, there is no one place where all forms are listed – this would be useful.***

***As the forms are online, it would be beneficial if there was a quick point of contact within the Home Office to deal with technical issues. If there are technical issues and no other method of submitting an application, this can cause serious issues if an applicant needs to submit that day due to their leave expiring. If technical issues cannot easily be resolved, this could result in out of time applications.***

25. In what ways is the online application process and in-person appointment system as developed to date an improvement on a paper application system? Are there any areas where it is problematic?

***The online system is much simpler than the previous system when it works as it should. The fact that copy documents can be uploaded rather than an applicant having to collate all original documents is a vast improvement. However, the availability of free appointments to submit biometrics is an issue. Applicants are already paying a biometric enrolment fee and should not therefore be charged an additional fee to attend an appointment. Due to the lack of available appointments however, applicants are often left with little choice but to pay.***

26. Do you agree with the areas which the Law Commission have identified in Chapter 14 as the principal ways in which modern technology could be used to help simplify the Immigration Rules? Are there other possible approaches which we have not considered?

***The principle areas have been covered in Chapter 14. There could be further ways forward, such as example videos of how to complete applications, the application forms could contain specific links to guidance documents or immigration rules where relevant and there could be more mobile accessible documents, immigration rules and application forms.***