

## Response ID ANON-8YVV-F6X4-5

Submitted to **Law Commission consultation on simplifying the Immigration Rules**

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### About you

**What is your name?**

**Name:**

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**What is the name of your organisation?**

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Destination for Education

**Are you responding to this consultation in a personal capacity or on behalf of your organisation?**

Other (please state)

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Collaborative response on behalf of INTO University Partnerships, Kaplan, and Study Group

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### Consultation Questions

**Consultation Question 1: Do consultees agree that there is a need for an overhaul of the Immigration Rules?**

Yes

**Consultation Question 2: Do consultees agree with the principles we have identified to underpin the drafting of the Immigration Rules?**

Yes

**Please expand on your answer::**

We agree with the principles identified, in particular that they should be made more accessible and the language more suitable for the target audience. We note that there is no mention of a key point which is that for the majority of the target audience of applicants under the Immigration Rules English is not their first language. This highlights the need for accessible language.

**Consultation Question 3: We provisionally consider that the Immigration Rules should be drafted so as to be accessible to a non-expert user. Do consultees agree?**

Yes

**Please expand on your answer::**

We agree that this is really important. It is generally accepted that the rules and the guidance attached to them are too complex and inaccessible. There is a definite need to use more accessible language and provide greater clarity. If they are not drafted for a non-expert user the inference is that all Applicants will be required to seek expert advice for any application would not uphold the principle of access bility.

**Consultation Question 4: To what extent do consultees think that complexity in the Immigration Rules increases the number of mistakes made by applicants?**

**Please share your views::**

In our experience most of the refusals of student visas we see relate to mistakes regarding the meeting of evidential requirements. It is complex to identify exactly

what a student has to provide. Without assistance and guidance it would be nearly impossible for a student to be able to identify this for themselves. This is only due to the complexity of the rules. The introduction of document checklists would greatly assist. We know this is due to mistakes made by Applicants because on analysis the Applicant did, for example, hold the relevant funds for the relevant period of time, they simply did not provide the required evidence of this, e.g insufficient bank statements, or statements in an incorrect format.

An additional area where students often make mistakes is on the academic progression Rules. To work out the two and five year rules the Rules are very confusing and difficult to decipher. Even with the guidance documents students regularly make mistakes as to which courses they are able to undertake.

**Consultation Question 5: This consultation paper is published with a draft impact assessment which sets out projected savings for the Home Office, applicants and the judicial system in the event that the Immigration Rules are simplified. Do consultees think that the projected savings are accurate?**

Other

**Please expand on your answer::**

We have elected not to answer this question.

**Consultation Question 6: Do consultees agree that the unique status of the Immigration Rules does not cause difficulties to applicants in practice?**

No

**Please expand on your answer::**

The way in which the unique status of the Immigration Rules causes difficulties to applicants in practice is that amendments are able to be made often and swiftly the potential for the Immigration Rules to be changed relatively unilaterally by an individual Home Secretary, given the unusual way they are formulated and progress into operation; backed by law, but not law themselves. The constant changes make it difficult for applicants to keep up to date and also means that the adequate scrutiny, discussion and debate does not always happen leaving there an increased chance of errors or mistakes that then later have to be corrected with further statement of changes. This happened frequently in 2015. Our view is that this has the potential to leave migrants at a heightened risk of being adversely affected by individual biases, or topical political agendas, in this area. This unusual status might also go some way to explaining the high volume of changes that have been made to the Immigration Rules in recent years further statements of changes.

**Consultation Question 7: To what extent is guidance helpfully published, presented and updated?**

**Please share your views::**

The volume of guidance is overwhelming. Most of the PBS guidance documents exceed 100 pages. The diverse range of guidance, the different formats and locations combines to add to the complexity of the rules rather than provide the clarity and assistance, the main aim of guidance.

In the same way that technology of hyperlinks and hover boxes has been suggested for the definitions section of the Rules we believe that using this same technology to link to the relevant guidance documents for a particular section or paragraph of the Rules would be very beneficial to assist in identifying which is the correct and relevant guidance. All guidance should be identifiable at the point of the Rules where it is relevant.

Further where there have been previous versions of the guidance all of these should also be made available at the hyperlink/hover box. They should also be clearly labelled as to which application and refusal dates they apply and the dates they were in force. For example "This guidance was in force from X date to X date and applies to applications which were made between X date and x date and to decisions made by the UKVI on X date to x date". The reason why the insertion of the dates is important is that it is often difficult for the user to identify any transitional provisions which sometimes use application dates and sometimes use decision dates. At present it is very difficult to locate previous versions of guidance.

An additional point regarding the presentation and publication of guidance is that the titles of the guidance are often confusing. Take for example the Tier 4 guidance.

"Tier 4 of the points based system: policy guidance" is 94 pages long and in the introductions states:-

"Introduction

1. This document provides policy guidance if you are a student coming to the UK under Tier 4 of the points-based system, and should be read with paragraphs 245ZT to 245ZZE of the Immigration Rules (these can be found on the Home Office pages at the GOV.UK website at: [www.gov.uk/government/collections/immigration-rules](http://www.gov.uk/government/collections/immigration-rules). It is correct at the time of publication, but some sections may change, so you should always check that you have the right version by going to our website.)
2. You can find application forms to apply under Tier 4 on the GOV.UK website at: [www.gov.uk/browse/visas-immigration/study-visas](http://www.gov.uk/browse/visas-immigration/study-visas)
3. You can find the Immigration Rules and more information on how to apply on the GOV.UK at: [www.gov.uk/browse/visas-immigration/study-visas](http://www.gov.uk/browse/visas-immigration/study-visas)
4. A glossary of terms used in this guidance can be found on page 6."

So it is clear that the guidance is for student applicants and they are referred to the relevant rules. But they are not referred to the additional Tier 4 guidance which sets out how the Tier 4 decisions are made by caseworkers.

This guidance entitled "Tier 4 of the points-based system" is 153 pages long and is arguably important for applicants to read in order to understand how their application will be handled and likely grant or refusal. It is also crucial if a student wished to make an application for Administrative Review as it sets out the factors and evidence that should be taken into account in assessing their application. Yet there is no link to this guidance in the introduction to the student guidance nor on the relevant Tier 4 website page for Applicants.

This is an example where the presentation of guidance is far from helpfully presented. It could actually hinder an applicant due to its inaccessibility.

Case study examples and flow charts are crucial in understanding UKVI guidance but do not appear consistently.

**Consultation Question 8: Are there any instances where the guidance contradicts the Immigration Rules and any aspects of the guidance which cause particular problems in practice?**

**Please share your views::**

There are definitely instances where a reading of comparable areas of T4 Guidance against the Immigration Rules could lead you to different interpretations – common language isn't always used, and some things are only referred in one or other, and not both.

One example regards the transition from a Tier 4 (child) visa to a Tier 4 (General) visa, although there are other examples including the English language

requirements.

**Consultation Question 9: To what extent are application forms accessible? Could the process of application be improved?**

**Please share your views::**

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

It is not clear how to access the application forms. The consultation refers to [visas4uk.fco.gov.uk](https://visas4uk.fco.gov.uk) having been closed as a site, but it is still operating as a beta site. The paper refers to Access UK but this site is difficult to locate.

In the same way that technology of hyperlinks and hover boxes has been suggested for the definitions section of the Rules, we believe that using this same technology to link to the relevant application form for a particular section or paragraph of the Rules would be very beneficial to assist in identifying which is the correct and relevant form to be used. This is especially so where an application can be refused simply on the basis that the incorrect form has been used. All relevant application forms should be identifiable at the point of the Rules where it is relevant.

It would be useful for practitioners if previous versions of the application forms were also available with the specific dates on which they were in force as it may be that the information that was before the UKVI has changed over time or to clarify when each version could be used in the event of a dispute as to whether the correct form was used.

**Consultation Question 10: We seek views on the correctness of the analysis set out in this chapter of recent causes of increased length and complexity in the Immigration Rules.**

**Please share your views::**

We agree with this analysis.

**Consultation Question 11: We seek 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.**

**Please share your views::**

We agree that this is illustrative.

**Consultation Question 12: We seek views on whether there are other examples of Immigration Rules where the underlying immigration objective has stayed the same, but evidentiary details have changed often.**

**Please share your views::**

In general the evidentiary requirements for students have regularly changed or been updated.

**Consultation Question 13: Do consultees consider that the discretionary elements within Appendix EU and Appendix V (Visitors) have worked well in practice?**

No

**Please expand on your answer::**

Our view is that in general, provisions allowing discretion have the potential to be useful, but in practice they are not used consistently or indeed well by Home Office decision-makers (for example the ability to request additional documentation to corroborate financial information submitted as part of a visa application is rarely used). It is likely that even they are unable to keep up with the volume of change to the Rules, and their current unwieldy layout, so proposals to limit these going forward would be welcome.

**Consultation Question 14: We seek views as to whether the length of the Immigration Rules is a worthwhile price to pay for the benefits of transparency and clarity.**

**Please share your views::**

We have elected not to answer this question.

**Consultation Question 15: We seek consultees' views on the respective advantages and disadvantages of a prescriptive approach to the drafting of the Immigration Rules.**

**Please share your views::**

We believe there is a balance to be struck between a more prescriptive approach providing clarity. Perhaps the use of language in the rules such as "Checklist" of documents to be provided with a clear list would be helpful. Whilst on the face of it a more discretionary approach provides greater flexibility in practice it is likely to reduce clarity for the applicant. All factors should be taken into account such as the high costs of making these applications where the applicant is relying on a discretion and cannot be sure as to the outcome.

Pre-2009 the Immigration Rules the decision making for student visas was discretion based and this left it open to abuse by both students and the decision makers. Post 2009 the introduction of the PBS system gave students a set of clear criteria to meet. This had provided clarity for Applicants.

In our experience the discretionary element which is currently in place for introduction of credibility interviews to assess credibility of students poses lack of clarity and introduces subjectivity into the system which is problematic. Given how problematic our experience is of the exercise of this discretion we are very hesitant to support an approach that moved to a less prescriptive approach.

**Consultation Question 16: We seek views on whether the Immigration Rules should be less prescriptive as to evidential requirements (assuming that there is no policy that only specific evidence or a specific document will suffice).**

**Please share your views::**

In relation to students we believe that the Commission should be slow to remove clear evidential requirements which would render the requirements unclear. Indeed we would support a re-drafting of the Rules to ensure that these requirements are made more clear.

**Consultation Question 17: We seek views on what areas of the Immigration Rules might benefit from being less prescriptive, having regard to the likelihood that less prescription means more uncertainty.**

**Please share your views::**

We have elected not to answer this question.

**Consultation Question 18**

Other

**Please expand on your answer::**

We have elected not to answer this question.

**Consultation Question 19: We seek views on whether consultees 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”?**

**Please share your views::**

We believe this will be extremely problematic for students due to the lack of certainty as to how an application will be decided and what documentation they are required to provide.

In our experience it is likely to lead to inconsistent and unreliable decision making.

**Consultation Question 20: Do consultees agree with the proposed division of subject-matter? If not, what alternative systems of organisation would be preferable?**

Yes

**Please expand on your answer::**

Yes the division by subject matter seems logical. If the archived rules are to remain available then we agree that they could be removed from the Appendix of the rules. Note that the gov.uk archive website is extremely difficult to navigate and it would be useful if links directly to previous sets of the rules are available using hyperlinks or hover tools with the dates specifically given as described above:-

“This version of the rules was in force from X date to X date and applies to applications which were made between X date and x date and to decisions made by the UKVI on X date to x date”.

**Consultation Question 21: Do consultees agree that an audit of overlapping provisions should be undertaken with a view to identifying inconsistencies and deciding whether any difference of effect is desired?**

Yes

**Please expand on your answer::**

We agree with this proposal.

**Consultation Question 22: Do consultees agree with our analysis of the possible approaches to the presentation of the Immigration Rules on paper and online set out at options 1 - 3? Which option do consultees prefer and why?**

Yes

Option 1

**Please expand on your answer::**

We would prefer option 1 as a more succinct approach avoiding large amount of duplication and repetition.

**Consultation Question 23: Are there any advantages and disadvantages of the booklet approach which we have not identified?**

**Please share your views::**

We have elected not to answer this question.

**Consultation Question 24: Are there any advantages and disadvantages of the common provisions approach which we have not identified?**

**Please share your views::**

We have elected not to answer this question.

**Consultation Question 25: Do consultees agree with our proposal that any departure from a common provision within any particular application route should be highlighted in guidance and the reason for it explained?**

Other

**Please expand on your answer::**

We have elected not to answer this question.

**Consultation Question 26:**

Yes

**Please expand on your answer::**

We agree with this proposal.

**Consultation Question 27:**

Other

**Please expand on your answer::**

We have elected not to answer this question.

**Consultation Question 28: We invite consultees' views as to whether less use should be made of subheadings? Should subheadings be used within Rules?**

**Please share your views: :**

We have elected not to answer this question.

**Consultation Question 29: Do consultees 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?**

Not Answered

**Please expand on your answer::**

We have elected not to answer this question.

**Consultation Question 30: Do consultees have a preference between overviews and tables of contents at the beginning of Parts?**

Yes

**Please expand on your answer: :**

We are of the view that the table of contents is more user friendly than an overview which may risk repeating the contents of the body of the rules, is open to inconsistencies and also could be given undue weight.

**Consultation Question 31:**

No

**Please expand on your answer::**

It is our view that mixing letters and roman numerals with the numbers of the paragraphs will leave the Rules in the similar position they are now. It would be best to stick to a numerical only numbering using . to separate the numbers. There should be a restriction on how many sub-paragraphs are introduced as too many sub-paragraphs only adds to the complexity. Instead it may be more appropriate to simply replace the whole section of the Rules where there are large amounts of amendments as opposed to using insertions. These add to difficulties in interpretation and comprehension.

**Consultation Question 32: We provisionally propose that Appendices to the Immigration Rules are numbered in a numerical sequence. Do consultees agree?**

Other

**Please expand on your answer: :**

We have elected not to answer this question.

**Consultation Question 33:**

No

**Please expand on your answer: :**

We believe this is unduly complex and creates the same mix of letters and numbers as we have now. If insertions were given more numbers with . that will be more straight forward. So if there is an insertion between 1.1 and 1.2 that insertion will become 1.1.1.

In addition there should be a limit in place on the number of insertions. So for example if it gets to the situation where 4(b) above is necessary there is instead a replacement of the entire section of the Rules.

In any event the examples of three sets of alphabetical indication such as 1AZB is extremely difficult to follow and should be avoided.

**Consultation Question 34: Should the current Immigration Rules be renumbered as an interim measure?**

No

**Please expand on your answer: :**

No. We believe this could cause a large amount of confusion and would lead to three sets of numbering in a short space of time. It is an unnecessary use of resources.

**Consultation Question 35: In future, should parts of the Immigration Rules be renumbered in a purely numerical sequence where they have come to contain a substantial quantity of inserted numbering?**

Yes

**Please expand on your answer: :**

We fully support a position where there is a replacement of a section of the Rules where a threshold of insertions is met. Even where this may require re-numbering.

**Consultation Question 36: We provisionally propose that definitions should not be used in the Immigration Rules as a vehicle for importing requirements. Do consultees agree?**

Yes

**Please expand on your answer::**

We agree.

**Consultation Question 37:**

Yes

**Please expand on your answer::**

Cross-referencing should be avoided wherever possible.

**Consultation Question 38:**

Yes

**Please expand on your answer::**

Yes to all of the above.

**Consultation Question 39: We seek consultees' views on 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.**

**Please share your views::**

Repetition should be avoided as far as necessary but, in some cases, is necessary to avoid cross-referring.

**Consultation Question 40: Do consultees agree with our proposed drafting guide? If not, what should be changed? Are consultees aware of sources or studies which could inform an optimal drafting style guide?**

Yes

**Please expand on your answer::**

Yes, we agree with the drafting guide. We have no alternative suggestion as to sources of an optimal drafting guide.

**Consultation Question 41: Is the general approach to drafting followed in the specimen redrafts at appendices 3 and 4 to this consultation paper successful?**

Yes

**Please expand on your answer::**

Yes – this is much clearer and easier to read/navigate, and also looks much better visually.

**Consultation Question 42: Which aspects of our 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?**

**Please share your views: :**

The general appearance is much cleaner and well set out. Removal of all the paragraph references from the current version is a major improvement. There is probably still room for improvement, for example in the redrafted paragraph 4.6.1 there are still a number of paragraph references cited with their meaning in parentheses. Paragraph 4.7.1(a) looks quite complicated with a number of cross-references bunched together, one of which (paragraph 4.2.1(d) does not exist).

**Consultation Question 43: We seek views on whether and where the current Immigration Rules have benefitted from informal consultation and, if so, why.**

**Please share your views::**

We would fully support more informal consultation regarding changes in the Rules. In practice this now essentially doesn't happen at present. We believe it would be beneficial both to Students and the UKVI if more consultation took place. This is particularly in areas where apparently small changes could have large effects

on (for example) the Higher Education sector. Recent mooted changes to SELT requirements – a general increase to level of English a Tier 4 applicant would need to have in order to be eligible to study in the UK - have previously been rowed back after a presumptive backlash from sector bodies. Increased, or earlier, consultation with sector bodies would allow such issues to be rooted out earlier in the drafting process, to universal benefit.

It is important that this consultation takes place with the Higher Education Sector rather than only lawyers or other professional advisers who are more accustomed to dealing with lengthy rules and legislation.

**Consultation Question 44: We seek views on whether informal consultation or review of the drafting of the Immigration Rules would help reduce complexity.**

**Please share your views:**

Definitely – this would assist greatly in ensuring better accessibility rather than consulting only with lawyers and other professional advisers who are more accustomed to dealing with lengthy rules and legislation.

**Consultation Question 45: 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?**

**Please share your views::**

Yes, a Keeling schedule would be helpful. Adding more detail on changes in explanatory memoranda is probably not necessary and could result in them being more difficult to read.

**Consultation Question 46: How can the temporal application of statements of changes to the Immigration Rules be made easier to ascertain and understand?**

**Please share your views::**

As we have already stated we would support a proposal to lay out the Immigration Rules in a simpler way, so historical versions are easier to access and laid out in a logical order. This would be a very welcome addition to the Immigration Rules. It would also be very useful for there to be clearly accessible links/views where users can see changes to individual rules between iterations of the Immigration Rules, so individual student circumstances can be applied, but also from a macro-perspective of being able to see these changes quickly in a general sense, without having to refer to an entirely different, historical version of the Rules. It is absolutely crucial that if this is done it is made clear what Application dates and what refusal dates the particular version of the rules applies to. This can be very difficult to find out and requires technical legal knowledge in order to work out the transitional provisions. The current gov.uk archive website is very difficult to navigate so having all the versions hyperlinked would be very helpful.

**Consultation Question 47: 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?**

Yes

**Please expand on your answer::**

Having commencement dates in the rules should be sufficiently clear.

**Consultation Question 48: Do consultees 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?**

Yes

**Please expand on your answer::**

**Consultation Question 49: What issues arise as a result of the frequency of changes to the Immigration Rules, and how might these be addressed?**

**Please share your views::**

Changes that are too frequent only cause confusion, particularly if effected in an ad hoc manner. It would be better to have only one review a year, for example (unless there were an urgent/exceptional need for changes).

**Consultation Question 50: Do consultees 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?**

Other

**Please expand on your answer::**

We feel it would make sense to have one key review of the rules annually, unless, as mentioned in response to Q 49, there was an urgent need to introduce changes.

**Consultation Question 51: Could a common provisions approach to the presentation of the Immigration Rules function as effectively as the booklet approach through the use of hyperlinks?**

Other

**Please expand on your answer::**

We've elected not to answer this question.

**Consultation Question 52: We seek views on whether and how guidance can more clearly be linked to the relevant Immigration Rules.**

**Please share your views::**

Can there not be a guidance link embedded in the individual rules or at the introduction of sections where guidance is required? It would make more sense for specific guidance to be available as and where it is required in the text, rather than have one large block of guidance elsewhere.

**Consultation Question 53: 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?**

**Please share your views::**

Our view is that the online process is sound from an accessibility and ease-of-use standpoint, but the in-person appointment system is not without issues, which in our view stem from the procurement exercise prioritising things like value-for-money as opposed to a positive customer experience. For example, whilst Service Level Agreements for turnaround times of Priority appointments have recently been reduced to 5 working days, this has come at a significantly increased cost to applicants. Higher Education Providers have also been quoted very large sums for Sopra Steria to conduct 'pop-up' services for their current students seeking to extend their stay in the UK.

**Consultation Question 54: Do consultees agree with the areas we have identified 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?**

Yes

**Please expand on your answer::**

As we have stated above there should be hyperlinks to previous versions of the Rules, to the relevant guidance to a particular section or paragraph of the rules and the relevant application form for a particular paragraph of the Rules. This would be of assistance to all users of the Rules.

**Additional comments**

**Additional comments**

**Please use the space below if you have any additional comments::**