

Response ID ANON-8YVV-F6DN-B

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

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About you

What is your name?

Name:

Joe Owen

What is the name of your organisation?

Enter the name of your organisation:

Institute for Government

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

Response on behalf of organisation

If other, please state::

What is your email address?

Email:

[REDACTED]

What is your telephone number?

Telephone number:

[REDACTED]

If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Explain to us why you regard the information as confidential:

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?

Other

Please expand on your answer::

Any simplification should include changes to how immigration rules are made and scrutinised to prevent problems with the rule book occurring further down the track.

The first part of this is ensuring that any rules receive robust scrutiny before they are laid before Parliament. Any change to the rules should be reviewed thoroughly within the Home Office. One way of doing this would be to introduce a function similar to the Social Security Advisory Committee (SSAC). The SSAC reviews regulation that is introduced into the benefits system, with the remit not of proposing changes to policy but rather assessing whether the proposed regulation is coherent and clear and how it will be operationalised. Something similar at the Home Office, where immigration rules are scrutinised by a multidisciplinary group – including lawyers and those who have worked on the front line – would help to ensure that immigration rules do not become unworkable again.

The second area where greater challenge is required is in Parliament. Here a select committee could be required to sift through proposed immigration rule changes to decide whether they should follow a negative or affirmative procedure. This would replicate the role played by the European Statutory Instruments Committee in secondary legislation brought forward under the European Union (Withdrawal) Act 2018. This could be done by a designated House of Lords committee, with legal expertise on the committee, which could recommend where votes in Parliament were necessary.

But more fundamentally, there must be a review of what can and cannot be done through secondary legislation. Home secretaries have used immigration rules to cut immigration by 100,000 people (even if it was then subsequently reversed), increased charges faced by migrants by almost 500% and introduced a rule on family income thresholds, which means that 40% of British wage earners are excluded from bringing in a spouse from overseas. All of this can be done with not a single vote in Parliament. It is right that the immigration system has the ability to respond quickly to changes, but the powers available to the Home Secretary are too broad.

This commission on simplification should assess whether there are sufficient constraints on the use of secondary legislation.

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?

Not Answered

Please expand on your answer::

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::

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?

Not Answered

Please expand on your answer::

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

Not Answered

Please expand on your answer::

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

Please share your views::

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::

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

Please share your views::

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::

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::

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::

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

Not Answered

Please expand on your answer::

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::

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::

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::

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::

Consultation Question 18

Not Answered

Please expand on your answer::

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::

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

Not Answered

Please expand on your answer::

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?

Not Answered

Please expand on your answer::

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?

Not Answered

Please expand on your answer::

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

Please share your views::

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

Please share your views::

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?

Not Answered

Please expand on your answer::

Consultation Question 26:

Not Answered

Please expand on your answer::

Consultation Question 27:

Not Answered

Please expand on your answer::

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: :

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::

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

Not Answered

Please expand on your answer: :

Consultation Question 31:

Not Answered

Please expand on your answer::

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

Not Answered

Please expand on your answer: :

Consultation Question 33:

Not Answered

Please expand on your answer: :

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

Not Answered

Please expand on your answer: :

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?

Not Answered

Please expand on your answer: :

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?

Not Answered

Please expand on your answer::

Consultation Question 37:

Not Answered

Please expand on your answer::

Consultation Question 38:

Not Answered

Please expand on your answer::

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::

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?

Not Answered

Please expand on your answer::

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

Not Answered

Please expand on your answer::

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: :

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::

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: :

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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::

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::

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?

Not Answered

Please expand on your answer::

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?

Not Answered

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::

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?

Yes

Please expand on your answer::

The volume of changes can contribute to the disconnect between policy and operations.

Our recent report found that too often, once a change to policy is agreed, policy makers will draft a new piece of guidance and send it to their colleagues in Immigration Enforcement or UKVI, expecting that a piece of paper will simply translate into a change on the ground. If the change is deemed important enough, policy makers might run a training session. But once there is political agreement on a new policy and guidance has been drafted, the policy and strategy team step away.

The high volume of changes can mean that those in operations simply fail to keep track with the constant change in rules, increasing the chances that the experience of users of immigration system do not match the intended policy. It's this kind of issue that has led to problems in the past such as the DNA testing issue at the end of last year.

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?

Not Answered

Please expand on your answer::

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::

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::

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::

Better data and improved systems can help caseworkers make better decisions. For example, a digital decision tool trialed in children's social care helped social workers to identify risky cases. With many children, whose cases were initially closed immediately, reappearing as at risk within a few years, a tool was developed to help caseworkers to identify those most likely to return. The tool highlighted risky decisions to caseworkers, allowing them to spend more time on them and to escalate the cases to managers or more senior caseworkers if necessary.

A similar approach could be taken with immigration decisions. Highlighting cases most likely to go to appeal would prompt caseworkers to spend more time on applications, preventing them from going through an even longer and more expensive process of appeal. It could flag cases for a second look, using the layer of senior caseworkers to review and confirm. Any trends could be fed through into training, alerting new caseworkers to common issues and providing them with greater support.

Additional comments

Additional comments

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