

Response ID ANON-8YVV-F6DF-3

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

Submitted on **2019-04-11 13:36:55**

About you

What is your name?

Name:

Jonathan Collinson and Gemma Manning

What is the name of your organisation?

Enter the name of your organisation:

University of Huddersfield Law School

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

Personal response

If other, please state::

What is your email address?

Email:

[REDACTED]

What is your telephone number?

Telephone number:

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::

We agree that there is an urgent need to overhaul the Immigration Rules. They are complex, not user-friendly, and their presentation defies common sense. Our experience of teaching immigration and asylum law at undergraduate and postgraduate level, is that students express confusion and frustration with the Immigration Rules and their complexity. In particular, the financial requirements of Appendix FM SE are rigid, detailed and complicated. The rules governing the Points Based System are inflexible in their content and present navigational difficulties between the general rules, the attribute points in Appendix A, the language requirements of Appendix B and the maintenance requirements of Appendix C. The prescriptive approach to the rules needs to be balanced with the need for proportionality, clarity and accessibility.

The Commission's report at para 1.27 presents seven principles to guide a redrafting of the Immigration Rules:

- “(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.”

We agree with the principles. However, it must be recognised that these are abstract principles and the test of their effectiveness will be determined by the ways in which they are ultimately put into practice. For example, the current Immigration Rules are comprehensive but at the cost of accessibility, and the overarching aim of simplification.

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 with the list of likely users of the Immigration Rules identified at 1.31 of the report:

- (1) applicants for immigration leave;
- (2) legal and immigration advisers;
- (3) Home Office caseworkers;
- (4) the judiciary; and
- (5) Members of Parliament.

We agree with the proposition that some form of simplification which improves the accessibility and digital presentation of the Immigration Rules benefit all of these users. Our experience as practitioners is that most non-expert users either cannot navigate, or do not currently understand the Immigration Rules, or both.

We also know from experience that the primary forms of information that most users will have about the immigration rules are not the rules themselves. Instead, the first place that many will go is the gov.uk website. For example, the first result for a Google search for 'how to apply for UK visit visa' from an official source is:

<https://www.gov.uk/standard-visitor-visa/apply>

then

<https://www.gov.uk/browse/visas-immigration/tourist-short-stay-visas>

This latter directs users through to the first.

The Immigration Rules do not appear as a search result on the first 10 pages of Google results (we did not search beyond this). We believe that most users will place reliance on the information provided in these pages (which are neither rules nor guidance) rather than on the Immigration Rules themselves. Indeed, the only link within these sites to the Immigration Rules themselves are with respect to forms of permitted work.

Simplification and accessibility of the Immigration Rules will only be effective if they are in fact used by users. It is incumbent on the Home Office to also create an online information system which is cohesive, consistent, accurate, and user-friendly.

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::

In its report, the Commission identifies the Supreme Court judgment in *Alvi* as a cause of the increased length and complexity in the Immigration Rules. We agree that the judgment in *Alvi* was a catalyst for a sudden growth in the number of Immigration Rules and their apparent complexity.

However, this is an overly simplistic analysis. The rationale behind the judgment in *Alvi* rested on the proposition that the Home Office guidance was being treated as rules rather than as guidance. This meant that, in effect, the Immigration Rules were already of greater length, complexity, and prescription, albeit that some of the rules were mislabelled as being "guidance".

The judgment in *Alvi* was constitutionally correct. The Secretary of State is empowered by Parliament to bring Immigration Rules, and these are subject to Parliamentary scrutiny. To treat guidance as rules would permit the Secretary of State to circumvent Parliamentary scrutiny.

The Secretary of State's response to the decision in *Alvi* was not to amend her prescriptive approach to the regulation of immigration, but instead to comply with the decision in *Alvi* by ensuring that what she had previously labelled as being "guidance" received instead the correct constitutional classification of "rule". The cause of apparent recent increased length and complexity of the Immigration Rules can therefore be attributed to the conscious policy decision of the Secretary of State to continue to pursue a prescriptive approach to immigration regulation.

As a consequence of the judgment in *Alvi*, the Secretary of State had a choice to either transpose the prescriptive guidance into the Immigration Rules, or to create a series of non-mandatory guidance as to what it would accept as evidence of the Immigration Rules having been met. This choice is recognised in the report at para 6.88, as it was set out in *Alvi* by Lord Walker as being available to the Secretary of State to comply with the Supreme Court's judgment. The Secretary of State did not take this option, yet now forms the basis of the Commission's initial recommendations.

This political choice towards prescriptive Immigration Rules is also not a recent political development, and pre-dates *Alvi* by many years. For example, the creation of the Points Based System for work and student migration in 2008 was described at the time as an exercise in 'control over flexibility' (Wray, 2009). This is an elephant in the room which the Commission's report does not appear to want to address; that the complexity of the current Immigration Rules is a consequence of political choice to pursue prescriptiveness.

This prescriptive policy was later pursued in choosing to overhaul the rules for Family Migration, arguably not in any need of amendment at the time (See ILPA, Liberty LINKS BELOW). The 2011 consultation on the Family Migration Rules, before the *Alvi* judgment, demonstrates this political preference. The introduction of the genuine and subsisting requirement, in addition to the existing requirement of intention to live together permanently, promoted a more prescriptive approach to decision making (ch 2 para 2.9)

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/269011/family-consultation.pdf. The first question of this earlier consultation asked whether the constitution of a genuine and continuing relationship, marriage or partnership needed clearer definition in the rules.

(Immigration Law Practitioners Association, UK Border Agency: Family Migration, a Consultation, Response from Immigration Law Practitioners Association (London: ILPA, 2011), <http://www.ilpa.org.uk/data/resources/13813/11.10.13-Family-Migration-response.pdf>

Many viewed this as unnecessary. ILPA's response to the Family consultation emphasised that the existing guidance in GA (Subsisting marriage) Ghana * [2006] UKAIT 00046 and the requirement in the rules of intention to live together permanently, incorporated an assessment of the genuineness of the relationship (link above). Further, Liberty's response highlighted the ample provisions already in existence to determine genuineness.

<https://www.libertyhumanrights.org.uk/sites/default/files/liberty-s-response-to-the-home-office-s-family-migration-consultation-oct-11.pdf>.

The stated policy intention was finding 'objective means of identifying whether a relationship, marriage or partnership is genuine and continuing or not' and defining 'more clearly what constitutes a genuine and continuing relationship, marriage or partnership' (Family Migration, A Consultation, June 2011. Para 2.9 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/269011/family-consultation.pdf). This sought to justify an overly prescriptive approach to a necessarily discretionary judgment. As ILPA warned (response page 6):

What constitutes a genuine relationship differs as people's relationships are different and unique to the individuals involved. It is not possible to define a genuine relationship or give set criteria.

Despite these warnings, the requirement was introduced as a rule and the factors in favour and against genuine relationships prescriptively defined in the guidance (Annex FM).

Another example of this existing preference for prescriptiveness is the introduction of the Minimum Income requirement in the Family Migration Rules. This conscious political move towards tighter immigration control, ignored significant objections and a lack of evidential basis for its necessity. In particular, the complex savings calculation where the minimum income is not met, and the detailed evidentiary requirements to satisfy the threshold, are unnecessarily onerous and complicated and do not sit easily within the immigration rules.

Whilst *Alvi* may have been the catalyst to the impenetrable Appendix FM SE becoming rules rather than guidance, the decision to have a MIR, and to require prescriptive evidentiary support, was propounded in the June 2011 consultation. The further intention to only account for the sponsor's income and savings (or joint savings), another issue attracting controversy (see Manning 2019) was also evident at this time. Para 2.21 of the 2011 consultation shows these intentions: In applying the minimum income threshold, we propose: • To take into account only the income and cash savings (including in a joint account with the spouse or partner) of the UK-based sponsor. We will set out in the rules or guidance the supporting evidence to be provided (e.g. P60s, bank statements) and the period over which any cash savings must have been or remain available to the sponsor.

Once again warnings against the need for a minimum income were ignored and the political decision for overly prescriptive rules and guidance prevailed (see ILPA response, Liberty response, JCWI, United by Love Divided by Law).

Another cause of the complexity of the Immigration Rules, not addressed in the Commission's report, was the decision to create a single 'Standard Visitor visa' which replaced the:

- Family Visitor visa
- General Visitor visa
- Child Visitor visa
- Business Visitor visa, including visas for academics, doctors and dentists
- Sports Visitor visa

- Entertainer Visitor visa
- Prospective Entrepreneur visa
- Private Medical Treatment Visitor visa
- Approved Destination Status (ADS) visa

The consequence has been a complex scheme of 'permitted purpose or activities' (generally, tourism and family visits, and economic activities related to the business activities of multi-national companies, and support for the international, service-based economy (sport, entertainment, entrepreneur, academic, and legal services), and 'permitted paid engagements' (which support a smaller range of generally self-employed work by academics, pilot examiners, lawyers, and artists, entertainers, musicians, and sportspeople). This is a classic example where "simplification" (turning nine visas into one) has created instead a complex web of Immigration Rules. This is because the comprehensiveness and prescription of each former category has been reproduced within the Rules for a single visa category, at the expense of user-friendliness and clarity.

The visit visa rules are absent from the chapter 2 analysis as to the main categories of the Immigration Rules (paras 2.41-2.57). This is a large oversight, especially as there were over 39 million visitors to the UK in 2017 (Visit Britain).

Finally, we fundamentally disagree with the analysis at paras 5.25 and 5.27 of the report in which the Supreme Court decision in *Alvi* is conflated with the creation of specific Immigration Rules which purport to incorporate the assessment of Article 8 ECHR. The judgment in *Alvi* was made with respect to the Points Based System and resulted in the importation into the Immigration Rules of requirements which had previously been in guidance.

The Appendix FM family migration Immigration Rules were not a response to *Alvi*, although the provisions of Appendix FM SE were changed to rules rather than guidance as a result of the decision. Appendix FM itself was designed to support a political agenda to reduce net migration to the UK (Collinson, 2017), in particular by instituting the Migration Advisory Committee's recommendation of a minimum income threshold (Home Office). But the MAC were only asked to advise on the minimum amount a sponsor should earn to avoid recourse to public funds, not whether a minimum income threshold was necessary or effective. (Manning, 2019). The government policy to have a single income threshold was a political decision, and this pre-empted the MAC's advice on providing effective support without reliance on state funding (Baroness Hale, Statement of Changes in Immigration Rules, Motion of Regret", Hansard, HL Vol.740, col.181 (23 October 2012), per Baroness Smith.)

The "Article 8 ECHR" Immigration Rules with respect to removal and deportation at Rule 396-399A were also not created as a response to *Alvi*. These new Immigration Rules did not have precursors in guidance. Instead, the intention of the Secretary of State was to create a new 'complete code' within the Immigration Rules to determine claims for immigration leave on the basis of private and family life in the UK (Manning, 2014). The Secretary of State sought to increase both removals and deportations of those the Secretary of State determined 'shouldn't be here', and was constrained from doing so by the interpretation of human rights law by the courts (Collinson, 2019). There was therefore no legal necessity for this increase in the length and complexity of the Immigration Rules; it was a purely political decision which had this effect.

By arguing that the recent increase of the length and complexity of the Immigration Rules is as a consequence of conscious political decisions by the Secretary of State, rather than as an unfortunate side effect of the Supreme Court in *Alvi*, as is implied by the Commission's report, is not intended as an exercise in attributing blame. Instead it is an argument with genuine consequences for the viability of the Commission's simplification proposals.

It appears clear that the chances of the Commission's recommendations (as provisional as they might be) being adopted by the Secretary of State as a basis for action is contingent on convincing him that he ought to abandon an entrenched policy preference for prescriptiveness. It is unclear to us that the Commission's report in its current form has any prospect of doing so. If the Commission's final recommendations are similar to those in the consultation paper, the political case for its approach will need to be significantly strengthened to have any chance of adoption.

Jonathan Collinson, 'The Troublesome Offspring of Section 19 of the Immigration Act 2014' (2017) 31 Journal of Immigration, Asylum and Nationality Law 244;

Jonathan Collinson, 'Disciplining the Troublesome Offspring of Section 19 of the Immigration Act 2014: The Supreme Court Decision in *KO* (Nigeria)' (2019) 33 Journal of Immigration, Asylum and Nationality Law 8;

Home Office, 'Statement of Intent: Family Migration' <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257359/soi-fam-mig.pdf> accessed 3 August 2017;

Gemma Manning, 'The Immigration Rules and Article 8 - A Complete Code for Deportation Cases?' (2014) 71 Student Law Review 34;

Gemma Manning, 'The Minimum Income Requirement for Family Settlement: The Cost of Integration' (2019) Public Law 304;

Visit Britain, '2017 Snapshot' <<https://www.visitbritain.org/2017-snapshot>> accessed 22 March 2019;

Helena Wray, 'The Points Based System: A Blunt Instrument?' (2009) 23 (3) Journal of Immigration Asylum and Nationality Law 231-251

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?

Other

Please expand on your answer::

The discretionary approach identified by the report to Appendix V with respect to visitors is a poorly chosen example. The report focusses on paragraph V4.5 of the Immigration Rules. These rules require the applicant to satisfy a negative requirement; 'the applicant must not intend to...'. It is not possible to add a prescriptive set of evidence to prove a negative.

A better example would have been rule V4.2(a); that the visitor will leave the UK at the end of their visit. This is a rule with a great deal of decision-making discretion attached as there is not a list of evidential requirements attached in the Immigration Rules. However, whether these discretionary elements have operated well in practice is highly debatable. Reports by The Guardian (Hill, 2018; Travis and Davis, 2015) highlight that a discretionary Immigration Rule can only work well if the decision-makers approach their decision-making task in good faith, with adequate training and appropriate insight. Our experience as practitioners is that they are not.

Amelia Hill, 'Lawyer blames visitor visa refusals on 'deep underlying racism'' (The Guardian, 6 July 2018)

<<https://www.theguardian.com/uk-news/2018/jul/06/lawyer-blames-visitor-visa-refusals-on-deep-underlying-racism>> accessed 22 March 2019;

Amelia Hill, 'Visitor visas refused: Nigerian family blocked from attending wedding' (The Guardian, 6 July 2018)

<<https://www.theguardian.com/uk-news/2018/jul/06/visitor-visas-refused-nigerian-family-blocked-from-attending-wedding>> accessed 22 March 2019;

Alan Travis and Caroline Davis, 'Andrea Gada's family granted visas to attend funeral' (The Guardian, 5 February 2015)

<<https://www.theguardian.com/uk-news/2015/feb/05/andrea-gada-family-granted-visa-funeral-zimbabwe>> accessed 22 March 2019

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::

We have outlined the dangers of an overly prescriptive approach to decision making, in highlighting the introduction of unnecessary requirements into the rules. This approach is now followed to determine genuineness of relationships. The requirement at E-ECP 2.6 Appendix FM, that the relationship must be genuine and subsisting, is determined in line with the prescriptive guidance in Annex FM Section 2.0. This guidance claims not to be a checklist of factors and to be used to 'assist and focus' decision making (Annex FM 20. Para 2.0). However paras 3.1 and 3.2 then proceed to list factors to be considered in determining whether a relationship is genuine or not, which runs the risk of being used in the way warned against.

The guidance does, however, alert caseworkers to the need to be sensitive to cultural and religious practice and the differences in approaches to cohabitation between cultures and faiths. (para 3.0). As a whole, therefore, the rule and the guidance present a more sensible approach than the approach taken to the financial requirements of the rules. The guidance carries exemptions and warnings and allows a caseworker to make an informed and sensible decision, provided the guidance is read as a whole and applied in a sensible and measured manner. This level of prescription in the guidance can be seen to compensate for the lack of the precision in the rule itself. With the rule simply requiring the relationship to be 'genuine and subsisting,' the caseworker will inevitably look to the guidance to determine this question. Case law on the subject can also assist the decision making as the criteria lack the rigidity of rules, and the main decision is the determination of the respective terms 'genuine' and term 'subsisting.'

By contrast, the level of prescription in relation to the evidential requirements of Appendix FM SE does not sit easily in the immigration rules, and will inevitably lead to unnecessary and frequent amendments to them. The permitted sources of income, savings and evidentiary proof of such would be much more appropriate for the guidance. Where the prescriptive approach was originally driven by policy, the need to maintain such detail in the rules is justified by the decision in Alvi . A requirement must be contained in the rules if it can lead to a refusal. Appendix FM SE section A1 (2) permits refusal of a claim for lack of a bank statement in a series of 6 bank statements, a missing wage slip where the corresponding bank statement is clear, or an absence of a letter from the employer confirming the length and type of employment and the period for which the wage has been paid at that level. The question needs to be whether all of these corresponding documents are really necessary in the first place to show the presence of qualifying salaried employment, rather than whether they should be within the rules themselves.

The consultation recognises that less prescription in the rules will lead to a 'trade-off between certainty and flexibility.'(para 6.9) but would also involve a more commonsense an proportionate approach to decision making (6.10). It is submitted that reducing the lengthy evidential requirements, whilst still maintaining the need for certain evidence to be produced, would not reduce the certainty of the decision making, as income does not need to be shown in many different ways. It would simply apply a more proportionate and sensible approach to evidencing income.

The need to reduce the complexity of the rules and to introduce an element of restraint in their drafting, discussed at 6.3 of the consultation, is desperately needed in the evidentiary requirements relating to income and savings. They are an obvious example of where currently rigid and specific rules need to be

expressed in more general terms. As noted at para 6.4 of the consultation, the greater detail can be supplemented by guidance and indeed the existing guidance on the financial requirements is clearer and more accessible than the rules.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/783641/Appendix-FM-1-7-Financial-Requirement-ext_1_.pdf

The Home Office need to address whether the evidential requirements can be simplified, without compromising the substance of the rules themselves. The level of income and/or savings required sits easily within the rules. Inability to meet that level will therefore lead to a refusal of the application. The evidence needed to meet the requirement must be easier to follow than the convoluted requirements of Appendix FM SE. Simplifying evidence to the basic pay slips and bank statements, for example, would streamline the process for applicants and caseworkers and achieve the same result. Likewise, the list of requirements for self-employment could be refined yet still be sufficiently robust. This would not reduce certainty but would encourage flexibility and clarity into the rules.

The ways in which gross annual income is calculated at paragraphs 13-20A Appendix FM SE would sit more appropriately within the guidance. All that is required in the rules is a reference to the need to calculate gross annual income based on the length of time in employment, the nature of the employment and the type of income. Calculations would then be more accessible in the guidance, with workable examples provided. The current Immigration Directorate Instructions are much more accessible on this and could be cross referenced. Again, this would not compromise the legal position, but would make the rules and guidance more accessible.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/783641/Appendix-FM-1-7-Financial-Requirement-ext_1_.pdf

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::

Our response to this question, can also apply to the general questions about prescription and discretion in the Immigration Rules. We do not believe that this aspect of proposed changes to the Immigration Rules can be divorced from the issue of appeal rights.

Any form of words which permits decision-making discretion must be accompanied by effective rights of appeal against refusal. In order to support such a form of words, we would require that rights of appeal to an administrative tribunal must be made available for all categories of immigration leave (including where they have been abolished) and the appeal ground of ‘not in accordance with the Immigration Rules’ must be reinstated.

Discretionary decision-making by the executive must be accompanied by judicial oversight. As well as being a fundamental constitutional principle, it has a practical effect of ensuring good administration of the Immigration Rules at first instance by the decision-maker.

Recourse to Judicial Review is inadequate, expensive and time consuming for individuals and the judicial system. The ground of Wednesbury reasonableness (that the decision is so irrational that no reasonable decision-maker could have come to it) is too high a threshold to effectively prevent irrational decision-making.

Appeals on the grounds of a human rights violation, which are currently permitted, are inadequate. In Adeji [2015] UKUT 0261, the applicant’s visit visa appeal was refused on human rights grounds because the applicant’s family life relationship with his father, stepmother and stepblings was not considered to be protected under Article 8 ECHR. But the decision to refuse a visit visa was taken on the basis that the applicant did not meet the Immigration Rule requirement that he was not to want to take up employment. In this case, the applicant had no effective recourse to appeal his visit visa refusal. In cases where the Article 8 ECHR family life rights are deemed not engaged then the executive’s immigration decisions is immune from effective challenge, which may lead to more arbitrary and irrational decision-making; a consequence which is contrary to good administration.

In Mohamed and Mostafa [2015] UKUT 00112 (IAC) whether the applicant meets the immigration rules was found to simply illuminate the proportionality of the interference with family life, rather than be determinative of it. The Tribunal did indicate that it was likely that if someone met the rules, an interference with their family life would be disproportionate. But under this formulation, there is still the possibility that an appellant could meet the Immigration Rules, but the refusal be upheld as a proportionate interference with the human rights of the individual. This again provides inadequate protection for the individual against poor discretionary 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?

Other

Please expand on your answer::

We do not agree that the criteria for refugee status and the rules for determining asylum claims are an appropriate subject matter for the Immigration Rules and should be deleted from them. We propose instead that the Refugee Convention be incorporated into UK law by way of primary legislation.

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?

Other

Please expand on your answer::

We disagree with the premise of the question. In our opinion, the table of contents, titles, headings, overviews, summaries, etc should all be considered as aids to interpretation. This is consistent with the way in which primary legislation is interpreted. The closest comparison is with the preamble of an Act, which provides a summary of the purpose of the Act.

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?

Yes

Please expand on your answer: :

We agree that the current numbering system of the rules needs to be changed. With the rules consisting of former guidance as well as the original rules proposed (for example in Appendix FM SE) the numbering system is complicated and confusing. The letters used in Appendix FM are very difficult to follow, and would be better replaced with the numerical system proposed. The examples given at chapter 11 of the consultation are more accessible than the current rules.

However, renumbering prescriptive rules numerically rather than alphabetically, may give the appearance of clarity but the rules themselves need to be more simplistic to become accessible to the majority of users. Clarity of substance as well as form is needed to address their complexity in any meaningful way. The political pursuit of prescription needs to be reassessed and the desire to promote accessibility, logic and clarity within the rules must become the central focus.

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: :

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?

Not Answered

Please expand on your answer::

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?

Not Answered

Please expand on your answer::

Additional comments

Additional comments

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