



Law Commission
Consultation: Simplification
of the Immigration Rules
April 2019



Law Society Response

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Introduction

The Law Society of England and Wales ("The Society") is the professional body for the solicitors' profession in England and Wales, representing over 170,000 registered legal practitioners. The Society represents the profession to parliament, government and regulatory bodies and has a public interest in the reform of the law. This response has been prepared by the Society's Immigration Law Committee.

Executive Summary

We commend the quality of the Law Commission's analysis of the ad-hoc development of the Immigration Rules ('the Rules') and the challenges they throw up for all who engage with them. Despite such deep problems the Rules retain a vital role as a statutory source of legal requirements in relation to the exercise of immigration control and provide for vital parliamentary oversight of wide-ranging executive powers. It is crucial that they are overhauled so that they are at the very least, intelligible and deliver fairness and predictability for applicants.

We have carefully considered the options for reform in the consultation paper and hope that our responses will inform and assist the Commission in producing its recommendations to Government. The consultation poses challenging questions, not least around the desirability of such extensive prescription, particularly in those Rules that cover the various routes of the Points Based System. From our perspective prescription can provide a necessary degree of protection for applicants against arbitrary and poor decision making, especially where independent appeal rights have been stripped away.

We would be concerned to see wide discretionary powers given to caseworkers in the current environment and urge caution here. This is particularly so whilst the primary underlying policy imperatives include vehement pursuit of the net migration target and the maintenance of a 'hostile' or 'compliant' environment which in our experience extends to both legal and illegal migrants.

The significant focus within the consultation paper on the decision in *Alvi* are apt as it seems increasingly to practitioners that the executive is treading similar ground as new procedures and practices develop and parliament is exercising less and less control over the rules.

The 1971 Act provides the framework in which the rules are made and requires them to be put before parliament before being enacted. Despite this, the Home Office shows less and less regard for this process as evidenced by the announced suspension of the Tier 1 visa route last year, apparently without the realisation that such a change required parliamentary approval (albeit under the negative resolution procedure) and, accordingly, amendment to the rules.

Equally of concern, is our view that it is less and less plausible that parliament is giving or is able to give anxious scrutiny to the Rules. In March 2019 300-page set of changes to the Rules were put before parliament on the day of publication with no advance notice or consultation. This course has now become common practice.

Whilst the rules themselves are attracting less attention operational processes and modernisation now seem to be imposing requirements, in the way guidance documents did before Alvi. The new generation of online applications represent a fundamental change in the way immigration applications are made yet no-one appears to have stopped and considered whether they are “forms” in the sense parliament understood when drafting the rules and accordingly whether they are a lawful process at all. More specifically, the online applications generate lists of required documents which often go far beyond what the rules require and waive requirements which the rules impose.

Other operational changes such as the delegation of responsibility for checking even evidence of identity to third party contractors mean the system is even further from what was envisaged in 1971.

In our opinion a fundamental review and redrafting of the Immigration Rules should be able to make the rules relevant again and reassert their status as the primary framework under which all immigration applications are made. Rational, clear and coherent rules could underpin the modernisation process rather than competing with it, creating a system that is legally sound rather than one which may be heading for the next Alvi-esque judicial intervention in the near future.

Consultation Questions

1. Do consultees agree that there is a need for an overhaul of the Immigration Rules?

An overhaul of the immigration rules is long overdue. They have now become so complex to comprehend and navigate that they are inaccessible to many applicants and confuse even expert legal practitioners. This poses significant challenges to all those who go to the Rules for authoritative guidance and a definitive statement of the criteria for the determination of immigration applications and their immigration status.

The consultation paper itself highlights strongly worded observations from the judiciary in respect of the length, complexity and ambiguity of the Rules, particularly in terms of volume, language and numbering. We are in full agreement with these observations and welcome the efforts of the Law Commission to bring organisation, structure and intelligibility to the Rules. In saying this, we do not underestimate the complexity of this task.

2. Do consultees agree with the principles we have identified to underpin the drafting of the Immigration Rules?

We are in broad agreement with the principles identified to underpin the drafting of the Rules. We are, however, more definitive in our view that the Rules should be accessible to those who are affected by them, particularly applicants themselves.

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, the Rules should be accessible to a non-expert user. Our experience as legal practitioners tells us that the number of applicants who seek to make applications without

professional assistance is increasing, including those who seek to appeal Home Office decisions in the Tribunal, unrepresented.

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

We believe complexity increases mistakes to a significant extent. This is particularly likely where the application refers to specified or excluded evidence. This is seriously detrimental to applicants, as it only takes one mistake for an application to be refused.

We are able to give a recent anecdotal example for a partner of a British citizen trying to navigate the various rules and guidance on Appendix FM led to the need to seek legal advice to challenge a refusal. This individual sought assistance where an entry clearance application was submitted in May 2018, a refusal was received in September 2018 and an appeal hearing is now set for July 2019. The following issues arose:

Failure to appreciate the relevant financial year of evidence required

The couple sought to rely on the partner's self-employment income to meet the financial requirement. The couple did not appreciate that the last full financial year's worth of documents needed to be provided, as it was not required to be filed with HMRC until the following July. When evidence of this was requested by the Home Office, they did not understand why it was required so did not provide it.

Failure to understand the relevant income which could be relied upon

The Rules make reference to showing a gross annual income of £18,600 (Para E-ECP3.1 App FM). In a separate part of the Rules, reference is made to "gross taxable profits from their share of the business" being the relevant figure (para 19 App FM-SE). The individual misunderstood this term as different terminology is used on a tax return.

The Rules and guidance are extremely unclear on this point so much so that the previous legal representatives also appear to have misunderstood the position. It is now necessary to make a fresh application. All this time and effort could have been avoided if the rules were more clearly worded.

It is far too complex for individuals applying without legal assistance and the ramifications of a slight misinterpretation are huge – in this case, the separation of husband and wife for nearly 12 months.

A further example relating to the recently re-designed Tier 1 Entrepreneur route is also instructive as to how complexity leads to mistakes. Here, an applicant seeking to purchase a going concern for £200,000 as part of a Tier 1 Entrepreneur Entry Clearance application may not appreciate that these funds will only count as investment funds if the purchase amount is retained by the company itself and not if funds are paid to the seller. As such an applicant who wants to purchase a business from a seller would need to invest a further £200,000 in addition to any purchase amount.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/751993/tier-1-entrepreneur-v23.0ext.pdf (at page 23)

Invested or spent by the applicant's business excludes spending on all of the following:

- *their own remuneration*
- *buying the business from a previous owner, where the money ultimately goes to that previous owner, rather than into the business being purchased, this applies irrespective of whether invested funds are received or held directly or indirectly by that previous owner. This is regardless of whether the money is channelled through the business on its way to the previous owner, for example, by means of the applicant or business purchasing 'goodwill' or other assets which were previously part of the business*
- *investing in businesses (other than those the migrant is running as self-employed or as a director)*
- *any spending which is not directly for the purpose of establishing or running their own business or businesses*

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?

We broadly accept that, in principle, simplification of the Rules should result in savings for the main affected groups identified. The projected savings indicated are, however, dependent on the assumptions that have been made.

The Impact Assessment document notes that the number of Judicial Reviews during 2016/17 were 12,490 of which Immigration law accounted for more than 80%, creating a budget deficit for litigation of £7.58 million.

Although categories with the right of appeal were restricted by the introduction of s.15 Immigration Act 2014, this has not necessarily resulted in more time-saving. For example, Standard Visitors have sometimes been able to successfully appeal on human rights grounds to the First-tier Tribunal following a refusal where the visit was with a family member. Applicants in Other categories where applicants are without a right of appeal then resort to Judicial Review for redress which has knock on effects for the public purse including court administration and judicial time as well the costs of successful applications.

Simplifying the Immigration rules coupled with the assumption that this would result in better decision making and a reduction in appeals would lead to what appears to be a logical conclusion that savings would be made.

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

Yes, we agree. Applicants are not necessarily engaged, and neither do they need to be engaged with the legal standing of the Rules. That said, some may understand that they represent the "practice to be followed" and contain the requirements to be met in order to make a successful application. Others may follow an application journey without being referred to the rules and without knowing they apply.

7. To what extent is guidance helpfully published and presented?

For any one immigration category there can be multiple sources of guidance, sometimes cross-cutting over a number of categories (e.g. calculating continuous residence for ILR purposes), or sometimes approaching the immigration category from different perspectives

(e.g. Tier 2 guidance, Tier 2 and 5 sponsorship guidance) of those involved in the same immigration category process. For a legal advisor, not to mention an applicant, the risk of missing crucial guidance is always a factor, as there is no cross-indexed list of all relevant guidance pertaining to each immigration category in one place.

The Home Office efforts to flag relevant guidance on their immigration category website pages is haphazard and often references entirely incorrect or irrelevant guidance.

The original immigration directorate instructions were in many ways more useful as they were directed at Home Office caseworkers, so it was readily apparent what information the caseworkers were directed to look for, and the criteria they needed to assess. The modernised guidance approach may make the information more readily accessible to the general public, and the layout is preferable, but drafting guidance towards caseworkers is the easiest way to ensure that a harmonised message is conveyed to all that might have access to the guidance (caseworkers, legal representatives, the public) instead of the current situation where anyone attempting to interpret the guidance has to go through possibly three sets of guidance (e.g. Tier 2 guidance for applicants, Tier 2 caseworker guidance, and Tier 2 and 5 sponsorship guidance). The caseworker's information must be definitive as it informs the casework decision maker, so it should be possible to reduce sources of guidance to that which is made available to the caseworker. This would also help to eliminate slightly different interpretations of immigration rules (e.g. Tier 1 Entrepreneur job creation). It would also reduce the scope, or at least make it readily apparent if the caseworkers had access to restricted guidance which was not available to applicants and their legal representatives (the modernised guidance format identifies the areas and often the reasons for the omissions. This supports greater transparency in caseworker decision making because if there is a disparity in the interpretation the applicant/legal representative knows where the source of the disparity lies.

Having guidance placed into immigration rules in a wholesale manner is not helpful, as the drafting of immigration rules and guidance do not fit with each other. For example, where guidance has simply been lifted into the rules, such as Appendix A Attributes, it is hard to find relevant information, and what appears to be simple note clarifications are actually crucial clarifications on the immigration rule criteria. Appendix J, K and Appendices B, KoLL and O all of which relate to English language competency. is difficult to follow for this reason. When the Codes of Practice and Shortage Occupations lists were published as separate documents it worked better.

Better cross indexing of the guidance and immigration rules is vital to avoid missing relevant criteria and information. For example, the English language guidance and rules are scattered, as well as salary and resident labour market requirements for new entrants (due to post study conditions.) It must be possible to present this criteria and information in a more cohesive manner.

On some occasions the Home Office helpfully notes out of date guidance as "Archived". As the gov.uk website pages containing guidance are not consistent, and are populated with lots of irrelevant information, many applicants and legal representatives (not to mention Home Office caseworkers themselves) use search engines like "Google" to identify relevant Home Office guidance. While the move to gov.uk is permanent, unless the cross indexing of relevant guidance is made more apparent and consistent, users will not rely on these pages to understand if guidance is still applicable. The efforts to group relevant guidance, for example for employers/educational providers, or prevention of illegal working are better

examples of how the Home Office have organised and grouped relevant up to date guidance.

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

See our comments above regarding inconsistencies in available guidance.

We also offer specific examples below of particular problems caused in practice as a result of contradictions between the guidance and Immigration Rules:

Appendix FM

The substantive Immigration Directorate Instruction on the [financial requirement](#) for more complex applications under Appendix FM refers to lettered categories of financial support (A-G) which do not even exist in the Rules. The same document indicates that documents will be accepted as alternates to bank statements (such as bank books) where such provisions are not made in the rules and also states that income from a limited company is to be calculated as self-employment income even when drawn as wages or dividends and consequently assessed on the basis of the last full financial year. This is in clear contradiction of the rules, where the only provisions in respect of calculation of income would treat this as income from employment to be assessed on the basis of the six months immediately prior to an application albeit with some additional evidential requirements. The guidance is very misleading.

Tier 1 Entrepreneur Guidance

Tier 1 Entrepreneur guidance exemplifies the problems applicants and legal advisors encounter because of inconsistencies between guidance and the immigration rules. The explicit contradictions mean that applicants and their legal advisors do not know which criteria to apply or evidence to support the applications. Sometimes the immigration rules require additional documents to that noted in the guidance or vice versa, making it difficult to know what level of evidence to supply. For example, in the Tier 1 Entrepreneur category, the rules do not require previous evidence of business activity, but the guidance is sufficiently unclear as to prompt many legal advisors to include previous evidence again. While the Tier 1 Entrepreneur category is being scrapped, it is indicative of the pattern of inconsistencies and omission that occur due to the way immigration rules and guidance are drafted and presented.

It would be extremely useful if the Home Office had a better mechanism of receiving and reacting to inconsistencies and anomalies in the Rules as well as rule drafting errors. While immigration practitioner bodies such as the Law Society Immigration Law Committee and ILPA regularly highlight issues to the Home Office, it often takes months or longer to rectify simple inconsistencies or errors.

As legal advisors and applicants are ideally placed to identify problem areas (as they are effectively the recipients of Home Office communication) it would make immigration law more consistent if there was a dedicated arena for feedback and if this feedback was acted upon more readily. The questionnaires sent to clients after the fact arrive too late in the process to capture useful feedback. It would help, for example, if the various types of clarifications provided by the business helpdesk were available on a dedicated blog/website and indexed so that immigration practitioners and applicants could access clarifications. It would also help the Home Office appreciate the seriousness and impact of certain errors, for example where a number of the same concerns are raised by a variety of practitioners and applicants. It would

also help build consistency and transparency of the interpretation of guidance and the immigration rules and cut down on Home Office time responding to individual queries from the public or legal advisors.

The Home Office needs to be more responsive when errors and unlawful disadvantages are created due to changes to immigration rules and guidance. For example, the residence changes which took effect on 11 January 2018 severely disadvantaged certain applicants and were applied without grandfathering provisions (a basic legal concept ignored). It took extensive lobbying to have the unfair consequences mitigated in the immigration rules which took up to six months to effect. The Home Office almost immediately accepted the fact that the change had been unfair, but initially invited applicants to seek discretion rather than to change the rules so that they were fair. The reason this example is mentioned is to show that the Home Office is often reluctant to change either rules or guidance even if the outcome of their application is demonstrably unfair.

Entry Clearance Applications and Article 8 ECHR

Currently, where an application does not meet the requirements of any rule and the Applicant accepts this, the Applicant is required to apply under the closest applicable rule, pay the relevant fee for that application and rely on the decision maker to correctly consider the application under Article 8 ECHR when the 'application under the rules' is invariably refused. This is deeply unsatisfactory.

This was seen in a case whereby an overseas parent of a minor British citizen in the UK had no rule to apply under and so it was accepted that the most relevant rule could not be met. Numerous attempts were made to access an application procedure whereby an application could be presented. The Applicant in this case was a vulnerable Syrian national. Pre-action correspondence raised the following issues:

1. The Home Office failure to respond to the request for exceptional consideration and assistance
2. The Home Office failure to consider the circumstances of a British citizen child, who has a pressing need for family unification with his mother, but is unable to meet the requirements of the immigration rules, for want of financial resources
3. The Home Office failure to provide an accessible procedure for considering applications, necessarily requiring consideration outside of the immigration rules
4. The Home Office failure to have an accessible procedure for considering an application for a fee waiver
5. The Home Office failure to provide any accessible arrangements to enable a person such as the Applicant to apply for entry clearance in view of their circumstances which include an inability to enter without a prearranged appointment and a lack of resources to enable them to access an entry clearance post. This specific Applicant's circumstances also included an inability to meet the requirements of the immigration rules for lack of financial resources.
6. The Home Office failure to engage with a practical resolution of the circumstances raised in this case, to have any consideration to the best interests of the applicant child and to have consideration to its duties under section 55 of the Borders Citizenship and Immigration Act 2009.
7. Whether the Home Office failure to engage with the circumstances drawn to its attention amounts to a breach of Article 8

8. The lack of process to apply for a fee waiver in entry clearance applications. The fee waiver guidance issued by the Home Office only relates to in country applications.

Ultimately no satisfactory response was received to this correspondence and the Applicant was forced to submit an online application under the Refugee family reunion rules which clearly did not apply to the Applicant.

Following the codification in the Rules of the requirements for in country applications relying on Article 8 ECHR together with specified forms, fees, fee waiver provisions and guidance, the absence of similar provisions for entry clearance applications is stark. It is settled law that Article 8 can be engaged when the parties are physically separated, *Kugathas v Secretary of State for the Home Department* [2003] EWCA Civ 31 (21 January 2003).

It is our view that current processes for considering entry clearance applications outside of the Rules are not ECHR compliant and must be urgently reviewed.

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

Following the recent rollout of new online forms, it is timely to have the opportunity to respond to this question. While there is hope that it is a period of transition, it is already evident that the same inconsistencies present among immigration rules, immigration legislation and guidance are also going to be present in the forms as well. The algorithms and selection tools inherent in the forms are not sensitive or adept to catch the variety of immigration situations which can arise in any particular immigration category. The following is an example a solicitor encountered earlier this week:

"Thought I'd share a little quirk of the new online FLR(M). Sponsor earns £14,500 thus falls beneath the Financial Requirement of £18,600. Applicant earns more but again short of the actual £18,600 and here by £1000. But the good news is at the further leave stage, you can join the two. Traditionally, I have always done this and submitted both incomes (ie pay slips and bank statements) on the 6-month evidencing principle: and *always* with success.

BUT on the new form

You have to tick the box in the Finance section of the form saying for each the applicant's, then after that the sponsor's, circumstances that their *individual* salary does not meet the Financial Requirement. This then throws up a documentary requirement to submit 12 months' worth of bank statements and pay advices for each and not simply the 6 months their 2 salaries that combined would equal and exceed the £18,600: thus ignoring in a sense the allowability of both salaries being taken into account as one. Maybe I've been doing it wrongly all these years. Just as their caseworkers have wrongly been allowing these applications made on that method of evidencing the Requirement where two salaries are used to fulfil the criteria. My guess however is that maybe the system architect might have missed the point here and failed to insert a simple algorithm linking the two incomes in FLR(M) cases in accordance with Appendix 1.7. Just thought I'd share it for what it's worth anyway and as ever will benefit from being corrected."

What is needed more than anything are free text boxes on the form to allow legal advisors and applicants to provide further case specific information that can address the inconsistencies and inaccuracies in the form. The scope of this is reduced. As we are aware that the document scanning process does not sufficiently flag cover letters which would normally clarify issues, we are concerned about the ability of applicants to accurately present their situation via the on-line application system and therefore avoid adverse credibility issues against applicants that the forms encourage.

The information provided with the on-line forms, from both the Home Office and its delegated partners, encourages applicants to consider mandatory documents only, and the checklists

provided by the Home Office are not always accurate. The information conveyed could seriously prejudice an applicant, and result in a failed immigration application. It is essential that the Home Office recognises that the on-line testing it underwent before rolling out the on-line forms is insufficient and that a stakeholder group or similar forum (as outlined above) to provide feedback on on-line forms is essential.

A worrying development in the new on-line application system worth mentioning is that applicants, once they have uploaded documents on the application website, have limited, if not no ability at all to check the uploaded version is intact. With the lack of means to communicate with the Home Office, and the fact that much of the scanning could be done by its third party partner agency (Sopra Steria, VFS, TLS) who could easily introduce errors (for example by refusing to scan each page of a passport which has actually happened to two clients in the Sopra Steria run London premium lounge) the risk to applicants against having their application fairly assessed on the documents they believe they have submitted is substantial. This needs to be urgently addressed. Otherwise the Home Office is hampering the ability of applicants, due to procedural measures, to make their case and evidence their application.

Further comments:

There is confusion between exercising discretion, which has always been outside of the immigration rules, and drafting guidance which improperly interprets the rules (whether more or less favourably). The two are separate. Discretion can be exercised in any situation to grant an application outside of the rules. Guidance which provides more lenient or stricter interpretation of the rules is not discretion, it is simply an interpretation of the rules and therefore leaves the applicant in a quandary as to how the rules should or will be applied to their application.

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

We agree with the analysis provided with regard the causes of the increase in length and complexity of the Immigration rules. We would add that the driving force appears to have been the underlying policy of prescription.

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.

We agree that the example of Appendix FM-SE is a good illustration of the way in which prescription can generate complexity. We are also of the view that such prescription can undermine the purpose of the rules. For example, the requirements to have a bank statement in a certain format undermine the purpose of the rules as, anecdotally, banks are unwilling in some circumstances to provide documents that meet the requirements. Also, the requirement to have wages deposited into banks and shown on bank statements does not actually correspond with a legal requirement for wages to be paid in that way.

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

We also point to the evidential requirements for routes under the points-based system. It is generally those routes, with more prescription, that have become more complex.

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

There have been so few applications under Appendix EU that it is hard to assess its success or otherwise in practice. It is also important to note that it has been rewritten and replaced a number of times since it was first published and included in the Rules. Until and unless Brexit happens and a significant volume of applications have been made, it will be impossible to evaluate how it has worked. Also, we note that we are unlikely to be able to assess if it has been too generous as we are only likely to see refusals.

The rules themselves do not on their face contain “discretions”. What they have is an almost complete lack of specific information on what constitutes work for example and how it is to be evidenced.

It is however a concern that it appears that the rules will actually take a back seat to the automated process. There will be an automated check, for example with HMRC, to reveal whether or not somebody has worked. The presence of entries on HMRC records with suitable date stamps on may be treated as sufficient evidence of past work for a Sponsor in a retained rights case with no consideration of the level of income or whether or not the entry actually reflects income. The relaxed approach appears to reflect a process that has been designed to resolve cases as quickly as possible rather than creating a true legal framework to be applied. The Law Commission will perhaps better understand their concerns once it has reviewed what we have to say about the Appendix and its implementation in practice where we have seen how automated systems are effectively introducing requirements for applications over and above what is seen in the less prescriptive rules.

Appendix V has not worked well in practice. Whilst the majority of applications have succeeded, we have real concerns that the lack of a clear framework has meant that some applicants from specific countries seem to have been treated very harshly.

We are aware that the Home Office operates an “enrichment” process whereby an algorithm assigns levels of risk to cases before they are considered. It appears that some countries see far higher refusal rates and we frequently see cases where applicants simply cannot get visas.

An analysis of the system can be seen here

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/631520/An-inspection-of-entry-clearance-processing-operations-in-Croydon-and-Istanbul1.pdf

On a visit to Sheffield in 2017 members of the Law Society had the opportunity to see how cases which have gone through the enrichment process are handled and were told a little bit about the mechanics of how it works. We were told that holding a particular national citizenship on its own could be enough for the application to be deemed high risk and subject to increased scrutiny and requirements.

We also observed immigration officers conducting assessments of cases flagged as high risk and in one example saw a visit visa application by the elderly mother of a man who was originally from Nigeria being refused because she had failed to provide a birth certificate to prove the relationship. It is important to note that a birth certificate is not a requirement in the Immigration Rules in such circumstances and we have seen numerous applications from other countries where that would not have been a reason for refusal in a case of this sort. It is clear to us that restrictions on applications beyond those set out in the rules are being applied in practice and in the absence of a clear framework it is impossible for applicants to prepare in order to ensure that they can be issued visas.

We also note that the back-end documentation of the enrichment process raises further concerns about how applications are being processed. One of our members recently had sight of a framework for analysis of evidence which advised caseworkers that employer websites are “often faked”; the tone of this language which builds in bias. It is unfortunate that in our experience discretion means that spurious reasons can be given for refusal with limited scope for challenge.

When rules which are not published are being applied, and where there is no effective means of redress or accountability by way of appeal or administrative review a less prescriptive system such as is operated with the visit visa regime at the current time can be highly unfair.

In practice we frequently find ourselves advising an applicant with regards to a relative who has been refused entry two or three times, that the best thing for them to do is simply abandon all hope of ever being admitted to the UK. This is because in practice there is nothing that we can do to secure them entry. In respect of an application by two Iranian brothers who were seeking to visit a sister in the UK and her children we pursued judicial review proceedings because there were extensive documents to confirm that they were well off financially and that they had visited the UK previously. There were some queries about the documents and about how they sat together but those concerns were not sensitive to the ways in which business might be done in a country like Iran. We ultimately pursued judicial review proceedings and lost with the applicant being left in a situation in which they can never visit the UK because their genuine documents have been so comprehensively rejected.

It is also important to note that in practice the Home Office has formalised a more prescriptive approach to visit visa applications without changing the rules. In the last 12 months the new online system for visit visas has been introduced and applies to applications made in most countries. The online system developed a checklist of documents which people are to provide. An example of one such checklist from July 2018 is below;

1. Other Passports or Travel Documents 2nd Document: issued at Yaounde Number: xxxxxx
2. Information about your visit Documents showing any plans you have made, such as: tour details / flight details / letter of invitation / evidence of sponsor's immigration status in the UK
3. Money (either income or savings) Documents such as: Bank statements / bank books / bank letter / balance certificate / tax returns / crop receipts

4. Documents showing that another person can pay for your visit, such as: Bank statements of the person paying for your visit
5. Home address Documents showing where you live, such as: Property deed / mortgage statements / tenancy agreements / accountant's letters / land registration documents
6. Evidence of assets
7. Documents showing that you own property or land, such as: Property deed / mortgage statements / accountant's letters / land registration documents
8. Additional Information Documents showing your marital status, such as: Marriage certificate / civil partnership certificate / divorce certificate / spouse or partner's death certificate
9. Evidence of family members remaining in your home country whilst you travel.

This checklist related to an applicant who was applying to visit her daughter and grandchildren in the UK. It is apparent in practice that the wording of the Immigration Rules in this the visit visas has become almost irrelevant. Where documents such as those listed above are not provided by applicants they will almost inevitably receive a refusal of the application querying their intention to return home at the end of the visit.

So, whilst the Home Office cannot publish more formal guidance documents without falling foul of Alvi, by changing the requirements within application forms, additional requirements are being introduced without there being any changes to the Immigration Rules.

Equally, requirements appear to be being waived in the same way. We note that the rules require the submission of original marriage certificates when bringing in a spouse, but in recent applications the automatically generated checklists have not asked for them to be provided.

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.

The length of the Rules do not increase transparency and clarity. The question is premised on an assumption that longer rules are necessarily clearer and more transparent. In practice the longer Immigration Rules we now have accompanied by the introduction of letter codes have meant that the Rules have become almost incomprehensible.

We believe the Rules could be shorter, clearer and more precise than they are currently. The current Rules we have are not fit for purpose.

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

We consider that there are considerable benefits to a prescriptive approach to the drafting of the Immigration Rules if it ensures consistency. A version of the Immigration Rules which was numbered simply and numerically in numerical order would be far easier to navigate than what we have now.

Appendix FM is in many ways an example of the worst possible way to organise a set of rules. There is simply no logic to the way they are structured within the categories and so the reader is left searching for where the suitability provisions might be found for example in an enormous block of text.

After Appendix FM was introduced we were consulted on the introduction of Appendix V. At that stage we commented strongly that the letter codes do not assist comprehension and navigability. Unfortunately, our concerns were disregarded.

If there is a prescriptive set of rules then we can be sure that we will be able to follow the rules when they are drafted. It is not just a benefit to applicants and lawyers, but it is of benefit to those working at the Home Office who actually deal with the rules and make decisions with reference to them.

There has been for some time a real disconnect between policymakers and those who deal with cases in practice. From our perspective this disconnect is worsening and we are finding more and more that those developing application criteria and processes are introducing requirements which are not in the rules. They are also choosing to dispense with requirements in the rules. An example is the requirement to produce original documents which was almost unilaterally disposed of in entry clearance applications with the rules not themselves being changed until long after we had raised our concerns with the operational teams who process cases.

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).

There are important distinctions to draw here. There is a difference between being prescriptive and being sensibly prescriptive. Many of the prescriptive provisions we have had in relation to appendix FMSE for example reflected the ignorance of the drafters in respect of how businesses or accounts work in practice. When FMSE was introduced we had applicants in self-employment for example who simply could not produce the evidence required because it did not exist. FMSE has effectively made it unlawful for applicants to be paid their wages in cash where there is no such prohibition in law generally.

A sensible degree of prescription is perfectly reasonable. To ask for six months of payslips and bank statements showing deposits that correspond to those payslips seems to us to be sensible as evidence of income because it not only demonstrates the income but avoids the possibility of deception. In terms of evidence of what makes a relationship genuine it may be appropriate to be less prescriptive.

The advantage of a prescriptive approach to us as lawyers is that we can tell our clients exactly what they need to provide, the disadvantage is that sometimes such documents cannot be provided and there needs to be a degree of discretion that sits alongside evidential requirements.

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.

It is difficult to highlight a section that might benefit from this, given that the sections that we would naturally choose to address are being reviewed very heavily. Much of Appendix A has been revisited recently with the entrepreneur visa route being brought to an end for example.

18. Our 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 consultees agree?

These are certainly relevant to concerns. The Home Office should also be considering fairness, transparency and consistency in application by decision makers.

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”?

This is a very dangerous form of words because it places discretion by implication almost entirely with the person making the initial decision. This could have a chilling effect on decision making. As we have seen in the case of visit visas different standards are applied to different countries currently and it is a formulation which could be used to cover a multitude of sins. If there were effective means of redress and review of the decision such as an appeal to an independent judge rather than an internal administrative review we might be more comfortable with it as an approach. As it is, it effectively gives one organisation complete control over whether or not applications can succeed which would be accompanied by what is at present a sub-standard appeal system.

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

Broadly, we agree with the proposed division of subject matter according to the following principles in the consultation:

- (1) all eligibility and evidential requirements applying to a particular category of applicants should be in one place;
- (2) provisions applying to more than one category of applicants should be grouped together according to their subject-matter;
- (3) Appendices should not contain bodies of rules but only subordinate narrative or lists;
- (4) Part 6A (the Points-based system) should be divided into chapters dealing with particular categories of applicants; and
- (5) sets of provisions that are currently separate but apply to the same immigration route (such as Part 8 (Family members), Appendix FM (Family members) and Appendix FM-SE (Family members – specified evidence)) should be consolidated.

We cannot, in principle, see any particular objections to the approach identified above. We think there may be an argument for Part 23 (services of notices) being placed early on in the proposed structure under common provisions and possibly Administrative Review as well.

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, subject to the outcome of this audit a more informed response can be made with regard to which option is preferred, a single set of rules, booklet or editorially produced booklets. The 3rd option seems to us be particularly risky and is likely to lead to legal challenges where a booklet is inconsistent with the rules. Once the level of customization is ascertained the Home Office should be encouraged to disclose where a policy reason exists for this or where it is just due to minor differences in drafting which are not intended to have any legal effect. The Home Office should be encouraged to harmonise and unify the relevant provisions where possible with the aim of reducing the risks identified in opting for a single set of rules. We agree that where customization is required this is highlighted clearly and the reasons for it explained in guidance.

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, these seem to be the available options. We prefer to aim for a single set of consolidated rules with checks and balances such as the highlighting and additional guidance described above. We do not think that the risk identified with needing to read rules of common provision and any modifications to those provisions for the particular route is sufficient to displace the benefits of this option. The fact is that the rules are complex in a particularly complex area of law. There is also a danger in trying to oversimplify for the sake of it. It is an impossible task to make these rules completely user friendly for the layman but they can be made far more accessible. Lawyers should be able to deal with any complexities and, in any event, these will be significantly reduced by the proposed option.

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

We agree with the advantages and disadvantages identified. Again, we highlight the likelihood that where there is repetition and customization in a booklet much of the material contained in a booklet will be irrelevant to the application. In our view this would exacerbate the issues identified with how the rules are currently structured and would not alleviate them. We think HO resources would be better deployed elsewhere e.g. in clearly identifying within a single set of rules any modifications to the common provisions depending on the immigration route.

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

Apart from those identified the risk of Applicant and HO error as well as litigation must also be considered. Where there is a single set of rules and common provisions, there are fewer sources of the law (subject to any additional guidance) than the booklet approach thereby reducing the risk of duplication, inconsistency and the need for updating the various booklets. The more work involved in maintaining the integrity of the booklets the greater the risk of omission and error leading to an increased risk of legal challenge, caseworker error and bad decision making.

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?

Yes, this seems a particularly sensible suggestion and would be the most efficient way of identifying route specific differences. The HO would need to be committed to updating as necessary but in our view it is the least resource intensive option available. The use of hyperlinks and footnotes could be used to good effect to ensure these were as accessible as possible to the layperson.

26. We provisionally propose that: (1) definitions should be grouped into a definitions section, either in a single set of Immigration Rules or in a series of booklets, in which defined terms are presented in alphabetical order; (2) terms defined in the definitions provision should be identified as such by a symbol, such as # when they appear elsewhere in the text of the Immigration Rules. Do consultees agree?

We agree that the definitions are grouped as suggested in alphabetical order and where a defined term is referred to elsewhere it is clearly marked as such either by # and hyperlink/hoverbox.

26. (15.26) We provisionally propose that:

(1) Definitions should be grouped into a definitions section, either in a single set of Immigration Rules or in a series of booklets, in which defined terms are presented in alphabetical order;

(2) terms defined in the definitions provision should be identified as such by a symbol, such as # when they appear elsewhere in the text of the Immigration Rules

Do consultees agree?

We agree that definitions should be grouped into a definition section in which defined terms are presented in alphabetical order. We also agree that where definitions then appear elsewhere in the rules, a symbol such as # could appear in the text of the immigration rules to indicate that there is a definition of that term in the definitions section.

At present, the definitions are spread across many parts of the immigration rules. Where a term has a definition elsewhere, it is not always clear that such a definition exists or where it can be found. Even in the introduction to the rules (which attempts to define some terms), definitions are not listed in alphabetical order.

27. We provisionally propose that the following principles should be applied to titles and sub-headings in the Immigration Rules:

(1) there should be one title, not a title and a subtitle;

(2) the titles given in the Index and the Rules should be consistent;

(3) titles and sub-headings should not run into a second line unless necessary; and

(4) titles and sub-headings should avoid initials and acronyms

Do consultees agree?

We agree with the proposed principles that should be applied to titles and sub-headings in the immigration rules.

The current titles and headings are confusing and difficult to navigate even for an experienced practitioner. If experienced practitioners find the titles and sub headings confusing, then it can only be assumed that this is even a greater problem for other readers.

The proposed principles would be a great improvement.

28. We invite consultees' views as to whether less use should be made of subheadings? Should subheadings be used within the Rules?

We believe that the use of sub-headings should be limited, though it may not be possible to eliminate them altogether.

The example sub-headings given of grounds on which entry clearance 'is to be refused' and grounds on which entry clearance 'should normally be refused' are necessary sub-headings because Home Office policy means that different grounds of refusal are to be applied in different ways.

Where sub headings are used, they should be kept to a minimum and should also include a new paragraph so it is clear that there are separate sections.

29. Do 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?

We would support overviews or tables of content if they are limited to factual matters and do not extend beyond that. On this basis, we prefer tables of content to overviews.

The example given at paragraph 9.17 of the consultation paper illustrates the problems with an overview being included in the immigration rules. In that overview at GEN 1.1, the drafters of the rules in July 2012 stated that Appendix FM reflects how a balance is to be struck under Article 8 of the ECHR. However, that overview was based on one particular view (that of the Home Office) and there were other views. Since then, Appendix FM as it was originally written has had to be amended because subsequent decisions of the courts have shown that the government's view of how the balance should be struck was incorrect. The overview as originally written did not strike the right balance.

An overview or a table of contents which helps the reader to understand what the Part of the rules deals with would be helpful. An overview which sets out a particular Home Office aim or desire and how they believe immigration law in a wider context should be considered, is not desirable. On this basis, the Law Society prefers tables of content to overviews.

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

We have a preference for a table of contents at the beginning of Parts as this could aid individuals to know what matters are dealt with within that Part without running into the difficulties outlined at question 30 above.

31. We provisionally propose 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) letter should be used for sub-paragraphs and lower case Roman numerals for sub-paragraphs.

Do consultees agree?

We support the proposal for following a numbering system for the immigration rules.

The current use of a combination of numbers and letters has led to parts of the rules being very difficult to use. Even experienced practitioners who use Appendix FM everyday rarely refer to the letters used because they are simply too confusing. The parts of the rules that use numbers are more accessible but those numbers are no longer in a numerical sequence and the whole numbering system needs to be redrafted.

We support the proposals for a numbering system.

32. We provisionally propose that Appendices to the Immigration Rules should be numbered in a numerical sequence. Do consultees agree?

Yes.

33. We provisionally propose that text inserted into the Immigration Rules should be numbered in accordance with the following system. Do consultees agree?

We agree with the proposals on inserting text.

It can be difficult to insert text into existing immigration rules and the proposals from the Law Commission seem sensible and we support them.

34. Should the current Immigration Rules be re-numbered as an interim measure?

It is our position that the focus should be on a complete overhaul of the structure of the immigration rules and the renumbering of the immigration rules would be part of the new structure.

If re-numbering as an interim measure is the product of the restructuring, then this would seem sensible. A separate task of re-numbering before the restructuring was done would seem to be unnecessary work but we do not have a strong view on this.

35. In future should parts of the Immigration Rules be re-numbered in a purely numerical sequence where they have come to contain a substantial quantity of inserted numbering?

We support the proposal that immigration rules should be re-numbered in future where there have been substantial inserts and therefore the text becomes confusing.

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

We agree that definitions should not be used in the immigration rules as a vehicle for importing requirements. The use of definitions in this way creates unnecessary complexity.

37. We provisionally propose 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 consultees agree?

We agree that where possible paragraphs of the Rules should be self-standing, avoiding cross-reference to other paragraphs unless strictly necessary and should state directly what they intend to achieve.

Even for experienced practitioners, navigating the cross references in the rules can be extremely difficult (the relationship between Part 8 and Appendix FM is a very good example). A reader of the rules often needs to navigate several parts and paragraphs in order to reach to understand the effect of the rules.

38. We provisionally consider that:

(1) appropriate signposting to other portions of the Rules and relevant legislation is desirable in the Immigration Rules;

(2) where the other portion of the Rules or the legislation in question already applies to the case, the signposting should be phrased so as to draw attention to the other material and should avoid language that purports to make the other material applicable where it already is;

(3) where portions of the Rules use signposting, they should do so consistently.

Do consultees agree?

We agree with the proposal on signposting within the immigration rules.

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

We support the proposal that repetition within portions of the immigration rules should be eliminated as far as possible. However, repetition should not be eliminated at all costs. If the elimination of repetition carries a risk of the applicable requirements not being apparent, then repetition would be preferred. Removing repetition requires clear drafting.

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?

The only part of the proposed drafting guide that we would disagree with is that concerning overviews. For the reasons in answer 29, a table of contents would be preferred.

Apart from that, it is our position that the proposed drafting guide would be an extremely welcome tool for immigration rule drafters.

One of the problems with the current immigration rules is that the drafting styles are different in different parts. Introducing a drafting guide which could be relied on for further changes would hopefully avoid a future point when the immigration rules get into the same disorganised state that they are at present.

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

We think that the general approach to drafting followed in the specimen redrafts at Appendices 3 & 4 is successful.

However, please see comments at question 42.

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?

The redrafting of the Part 9 (Grounds for Refusal) works well and we support the position that the grounds of refusal should be in one place rather than having grounds for refusal listed in different parts of the immigration rules.

However, if taking this approach, it is important to recognise that, as a matter of policy, the Home Office have applied differing grounds of refusal to different applications. Though many grounds are similar for all applications, there remain differences. In simplifying the immigration rules, those differences should be recognised as otherwise the simplification could be to the detriment of migrants.

For example, paragraph 4.4.1 (h) and 4.4.2 in the specimen draft is the new version of current paragraph 320 (7B). While it is good to simplify this, under the specimen draft of the general grounds, it appears that this ground of refusal now applies to Appendix FM applications and those applying for leave to enter as the family members of British citizens or settled people could then be subject to a mandatory ban. For policy reasons that were debated at the time that paragraph 320 (7B) was brought into force, such mandatory bans do not apply to the family members of British citizens or settled people. This simplification appears to impose a general ground of refusal on family members that should not be there. This could be remedied with adding 4.4.2 (f) stating that this does not apply to any application under Appendix FM.

Also, the paper has assumed that the different effects of criminal convictions is the result of an oversight and has therefore brought equivalence to limited leave to enter and limited leave to remain. We do not believe this is an oversight.

These are examples of how we need to be careful with the general grounds of refusal but we support the general approach.

The same care will need to be taken when dealing with Appendix FM, though we generally support the redraft.

For example, when dealing with the accommodation requirement under 12.7, the rules rightly state that the accommodation requirements do not apply if the new paragraph corresponding to EX1 of Appendix FM applies. There is, however, no equivalent comment made in the financial requirement section. We need to ensure that no financial requirements would be placed on applicants under the new paragraph corresponding to EX1.

Paragraph 12.5.1 (a) also shows how simplification can miss the current complexities. In order to use the income of a partner returning to the UK, there is a two-stage test of having the requisite income abroad and then showing that you will have the requisite income when returning to the United Kingdom. The specimen draft does not reflect this. (One answer, of course, would be to make the financial requirements more straightforward).

The rules in the financial requirements are also relying on certain matters being “specified” and it appears that we are looking to guidance here and it may be preferable to bring such specification into the rules, though given the complexities of the financial requirements this could be very hard.

We also need to be careful on small technical points such as at paragraph 12.8.3 where it says further leave “after 30 months in the UK” whereas such leave would be sought shortly prior to 30 months in the UK. Paragraph 12.8.2 seems to be in the wrong place and it is not clear if it accurately reflects the current English language rules.

These are, though, technical points that need to be taken into account but do not detract from our approval of the overall approach.

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

In our recent experience there has been virtually no consultation on the formulation of the Rules. The last significant change to the Rules of which we had proper advance notice was the introduction of appendix V and the administrative review provisions.

Subsequent to that consultation there has been little formal or informal consultation about the formulation of the rules. At the time of writing a statement of changes was published which ran to nearly 300 pages which replaced appendix EU and effectively closed the entrepreneur visa route and introduced replacements for it. Whilst we had some awareness that the Home Office was planning to do this there had been no consultation with the Law Society, formal or otherwise. Accordingly, there can have been no benefit from such consultation as it simply did not take place. When there are changes introduced in this way there is inevitably litigation within a period of time which results in further reformulation to the rules to ensure that they are fair. Proper consultation could avoid significant problems and significant litigation.

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

Informal consultation would be of enormous benefit in the drafting of the Immigration Rules providing the Home Office was receptive to feedback, both positive and negative. Over the last year we have devoted a considerable amount of time to trying to work with the Home Office to understand that the remit of the Law Society is not necessarily to liberalise the system but to ensure that the Home Office work better in practice. We are trying to build a more constructive relationship with the Home Office who need to be less defensive of their position.

It would be wrong to treat the benefit of such consultation exercises as simply resulting in reducing complexity. The true benefit would be in reducing mistakes and increasing certainty for applicants rather than the lottery of outcomes they can currently experience. It is these

mistakes that lead to distress and inconvenience to applicants, financial loss and appeals and litigation in the long term.

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?

We suggest a hybrid position to make the Rules easier to assimilate and understand. Firstly, we believe that the statements of changes should set out the purpose intended to achieve, within the memoranda. We do not agree that this would necessarily make it less readable. Secondly, a Keeling schedule would be helpful, for the sake of ease, and would provide a clear view of the amendment without the need for manual cross referencing. This would be particularly useful where there has, for example, been a change in a conjunction, such as a change from “or” to “and”, which could significantly impact the meaning of the Rule.

The example below is taken from the most recent statement of changes HC1919 and represents a less impactful amendment although presentation clear in terms of what is changing.

Changes to the Introduction

Intro1. In paragraph 6, for:

“**Employment as a Doctor in Training**” means employment in a medical post or training programme which has been approved by the Postgraduate Medical Education and Training Board, or employment in a postgraduate training programme in dentistry.”,

substitute:

“**Employment as a Doctor or Dentist in Training**” means employment in a medical post or training programme which has been approved by the General Medical Council, or employment in a postgraduate training programme in dentistry.”.

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

We agree that there is a need for consistency between the statement of changes and the Rules themselves. We therefore agree that that where an implementation provision impacts an implementation in a previous statement of changes, this should be referenced in the implementation provisions as well as the memorandum to the statements of changes. Further, that a drafting style in the line of the example given at 13.36 of the consultation document would be helpful way to ensure that the changes and their applicability are easier to understand.

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?

We take the view that the current method of archiving is sufficient and the consultation document already recognises the common-sense approach to delays in archiving how these

can be circumvented i.e. by making online versions of the document available until a PDF version is available.

Whilst setting out the commencement dates in the Rules themselves adds further clarity and ease of reference in the short term, there is likely the need to be able to seamlessly cross-reference various versions of the rules therefore warranting a more sophisticated archiving system. We believe that there would be far greater cost implications of undertaking a more sophisticated system in the future than there would be now.

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?

We agree that Appendix F and paragraphs 276DI and 276ADI can be omitted from any redrafted Rules as they will be accessible through the archives in any event.

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

The frequency of the changes to immigration rules usually impacts non-expert applicants the most. This can have the domino effect of an application being refused with far-reaching implications for the applicant and any associated dependants. Implementing fixed periods that statements of changes can be introduced would be a way to resolve frequency of changes.

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?

We are in broad agreement that there should not be more than two major changes to the Rules each year. In the event that there is the need to give effect to a judgment consideration at a time where a major change is not due then effect should be implemented on a case by case basis until a change date falls due.

51. Could a common provision's approach to the presentation of the Immigration Rules function as effectively as the booklet approach through the use of hyperlinks?

Yes, we believe this could work very well but it would be essential to ensure that the hyperlinks work effectively.

We are also of the opinion that a well-structured online common provisions approach, as referred to in paragraphs 7.9 - 7.16 should better enable consistency to be maintained. A booklet approach, which requires the repetition of provisions, carries the risk of inconsistencies as referred to in paragraphs 7.29 – 7.48.

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

As noted on paragraphs 4.23 and 4.24, guidance is not subject to Parliamentary scrutiny and can be subject to regular change.

If a booklet approach is adopted to the Immigration Rules, we would question the need for the type of guidance currently produced in support of, for example, the Tier 1 (Entrepreneur) route. If a booklet of Rules relating to the scheme was produced that was designed to be easier to read by applicants, there would be no need to reproduce that information in guidance. Guidance would still exist for caseworkers and some guidance for applicants could be produced to explain, for example, the step by step process for making an application, the process for providing documents, where discretion may apply etc. rather than seeking to explain the Rules in simpler terms which has led to so many of the inconsistencies referred to in paragraph 4.

If a common provisions approach is adopted, then in our view guidance becomes more necessary so that for each application type, there is a specific set of information that can be read by the applicant. However, it would then become important to ensure that the inconsistencies that are currently inherent in the guidance are removed. If there were a common provision's approach with guidance playing a more central role, we would recommend that the online rules contain links to relevant guidance, and that the guidance in turn contains links to the Rules. We would also recommend that there is clear information for users that explains the legal status of the Rules vs the guidance. It should be clear that the Rules take precedence.

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?

Whilst overall the transfer from a paper application system to an online application system has allowed many applications to be filed in a more efficient way, there remain significant issues.

In spring 2019, without any warning, the system for out of country applications was changed with many application types now purporting to allow applicants to upload documents to third party providers (VFS etc) before attending an in-person application. However, the platforms seem unable to cope with applications that often contain significant amounts of evidence. Part-way through uploading documents, the system can simply time-out and the whole process has to start again. It is also not possible to view documents that have already been uploaded.

As a consequence, many applicants may not have uploaded essential evidence in support of their application and may be unaware of this.

Booking appointments can also be difficult depending on the location of the applicant. In some cases, it has been impossible to progress through the online booking process due to what appear to be technical issues with the platform. Applicants have had to turn up at processing centres in the hope of being able to file their documents.

The Independent Chief Inspector of Borders and Immigration is currently inspecting 'visa casework 'onshoring' ('network consolidation') and will therefore have a raft of information on the various issues that have arisen in regard to the online visa application process.

For more applicants, an efficient online application process with the ability to upload evidence and to book appointments is a far better than having to provide original documents. However, it is essential that the Home Office ensures that third party providers have the technology up and running to enable the system to work efficiently.

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, we agree that the areas identified are the principal ways in which modern technology could be used to help to simplify the Immigration Rules. An end to end process as outlined in paragraph 14.21 would be welcome.

Unfortunately, the Home Office's efforts to try and implement more intuitive applications forms for some applications have resulted in some application forms containing numerous questions that are of no relevance to the applicant's case, or Immigration Rules relating to the applicant's case at all. Applicants are channelled to these questions by previous answers. If these questions are not answered – and the applicant may not have easy access to the information needed to provide answers about non-relevant family members etc – the applicant cannot proceed through the application form unless they provide an incorrect answer to avoid triggering those questions.

A more intuitive end to end system requires significantly more preparatory work and testing than we have witnessed to date and we are concerned that the sub-standard releases that we have seen to date have been the result of third parties tendering for work without fully appreciating the exact requirements in order to deliver suitable technological solutions. It is essential that more resource is deployed to research and modelling of the platforms and systems that would be needed to achieve the end to end approach set out in paragraph 14.21.