

Response ID ANON-8YVV-F6X9-A

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

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About you

What is your name?

Name:

Nazek Ramadan Moussa

What is the name of your organisation?

Enter the name of your organisation:

Migrant Voice

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

Response on behalf of organisation

If other, please state::

What is your email address?

Email:

[REDACTED]

What is your telephone number?

Telephone number:

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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:

Yes, we would prefer for our answers to be treated as confidential. We have generally aimed to give non-confidential information, however, some of the individuals we are dealing with prefer for their information to be kept confidential or to be anonymised. We trust that any information that could be used to identify individuals or matched to them (directly or indirectly) will be treated as confidential and cannot be used without that individual's consent.

Consultation Questions

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

Yes

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

Yes

Please expand on your answer::

We agree that the Immigration Rules should be re-drafted along the principles of clarity, suitability for a general audience, comprehensiveness, accuracy, consistency, and capacity for presentation in digital form.

But above all the Immigration Rules are part of the wider immigration law and other laws of the country and therefore should be fair, and compatible with our human rights and equalities obligations.

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::

Especially since legal aid has been cut, the cost of Home Office fees are extortionately high, not to mention any additional legal charges the client have to face - more and more clients are being forced to represent themselves and do their own legal case work.

Another reason the clarity is needed is to create greater public awareness as to what is contained in the rules for example to dispel notions that migrants are abusing the system, or that rules favour migrants, etc.

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::

Many of our members have made unintentional mistakes because the rules are too complex to understand. Individuals sometimes have to repeat applications several times because a simple mistake has meant the application has been refused and the applicant lost large sums of money and have to pay new application fees.

The Rules are so complex that even some of our members who are legal representatives have had to have special training on the rules.

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

Other

Please expand on your answer::

We could not find a consultation document that contained the projected savings for the Home Office. However we agree in general that simplification of the rules would mean the law/ rules are clearer to applicants and thus they are less likely to make mistakes in their applications. Mistakes may require second applications being made or applicants' requesting for reviews of Home Office decisions. Getting most applications right the first time for both the applicant and the decision maker should lead to saved costs on both sides.

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

No

Please expand on your answer::

The fact that the immigration rules do not go through proper parliamentary scrutiny (with wider social input and feedback) is a cause for grave concern as evidenced by the hardships and difficulties faced by individuals accessing their rights. Their unique status means that there is no, very little or inadequate impact assessment done. Consequently the immense impact the rules can have on individual's lives is not discovered until the rules are live and in play in the real world.

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

Please share your views::

It is good to have Guidance to application forms as these provide information that is directly relevant to a particular type of application. HO guidances are generally well published and accessible. However, it would be useful to have Old Guidances that have been superseded by newer guidances being easily accessible in one area/ tab. They can be grouped by subject matter and date. A central place for old guidances is useful where a decision takes several months to reach and in the meantime the rules might have changed.

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::

Not answered

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

Please share your views::

Many of the forms are online and while this is easier for some people to access, there are some individuals who have no online access and some who may struggle with computers or new technology thus cannot access forms and end up being unintentionally marginalised or discriminated against.

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::

Not answered

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::

Yes it is. It is too convoluted, the numbering is awful so isn't helpful because an applicant/ caseworker has to struggle to keep in mind which particular section of the Appendix is being referenced. It might be useful to have guiding principles and basic requirements as much as possible with the rules/ guidance only stating what needs to be evidenced as opposed to how it should be evidenced. Where the list has to be precise it's better to err on clarity rather than trying to cover every potential scenario that could be presented before the Home Office.

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::

Not answered

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

Not Answered

Please expand on your answer::

Not answered

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::

If the Rules were transparent and clear, length would be less of an issues, but this is not the case. The rules appear as a labyrinth and are convoluted and difficult to use in practice.

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::

A prescriptive approach aims to be exhaustive or cover as many scenarios as possible though in reality it is more restrictive and cannot cover all eventually.

A prescriptive approach is also exhausting if every applicant has to go through numerous scenarios (most of which will not apply to his or her case) just to obtain information that applies to them. It would be more useful to guide applicants generally on what they need to prove.

A more discretionary approach to evidence would be helpful to applicants.

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 agree that a less prescriptive approach would be preferable.

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::

Not answered

Consultation Question 18

Yes

Please expand on your answer::

Nothing added.

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::

Stating that a requirement will be left "to the satisfaction of the decision-maker" is ambiguous or is unclear as to what criteria the case-worker is applying. There should be some basic guideline which would give an applicant a good idea of what is required and also enable them to know on what basis/ criteria a decision maker made a decision should they wish to challenge that decision.

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

Not Answered

Please expand on your answer::

X - Not answered

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

Yes

Please expand on your answer::

Nothing added.

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::

X - Not answered.

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

Please share your views::

X - Not answered.

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

Please share your views::

Not answered.

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?

Yes

Please expand on your answer::

Consultation Question 26:

Other

Please expand on your answer::

It would be good to have definitions in one section and identify them with a symbol. However it is equally helpful to have definitions that are relevant to one kind of application or a particular section explained in that section or in the guidance accompanying that type of application. This sectional definition could be a quick list that is hyperlinked to the definitions. Scrolling down a long list of general definitions could prove tedious if that's the only reference applicants have to use.

Consultation Question 27:

Yes

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: :

Yes, subheadings should be used within rules - they are useful especially if one is scheming quickly through sections or needs to go directly to a particular part of the rules. They can also serve as extra markers and breaks to the eye rather than just having continuous sentences or paragraphs even where there is numbering.

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?

Yes

Please expand on your answer::

Yes it would be helpful to add that the overview is not an aid to interpretation.

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

No

Please expand on your answer: :

Both are useful.

Consultation Question 31:

Yes

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: :

Consultation Question 33:

No

Please expand on your answer: :

Having letters before the numbers (and again after the numbers will add to confusion. It might be worthwhile investigating if there is a symbol or different symbols that can be used to depict the new paragraphs eg. delta, beta or any other symbol that conveys the intended meaning or position of the new additions.

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

No

Please expand on your answer: :

Better to work on finalising and putting into effect the findings from this consultation. Interim renumbering could add to confusion as the existing numbering is used in cases (precedents). If there is a section that is considered to be most in need of renumbering even in the interim, then maybe only that section or those few sections of the rules should be re-numbered.

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

Yes

Please expand on your answer: :

Helps maintain a clean numbering system and this can be expanded "indefinitely" (numbers go further than the alphabet). With letters, one would need to restart them after completing a-z which adds to the complexity of numbering paragraphs and new insertions.

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

Yes

Please expand on your answer::

Definitions should be just that, definitions. They should aim to clarify meaning not add new requirements.

Consultation Question 37:

Yes

Please expand on your answer::

Nothing added.

Consultation Question 38:

Yes

Please expand on your answer::

Nothing added.

Consultation Question 39: We seek consultees' views on whether repetition within portions of the Immigration Rules should be eliminated as far as possible, or whether repetition is beneficial so that applicants do not need to cross-refer.

Please share your views::

Repetition can be used where this can be done in a clear and brief manner. If it is large parts of immigration rules that need to be provided then repetition will make the rules much longer and it is better to cross reference.

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::

Not answered.

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::

Not answered.

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: :

Not answered.

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::

Some of the consultations we have taken part in in the past have been of questionable quality. One got the sense that there was no actual intention to seek public opinion and input either by limiting the knowledge of the consultation taking place, the time frame it was open in, lack of guidance, and worst of all the kinds of responses available e.g. by having leading questions or limited options for answers: yes, no, with no possibility of writing explanation or selecting other. The family migration rules consultation is an example of the latter.

So while consultation is important, if it is an inadequate consultation it does not adequately inform the immigration rules. If furthermore the rules are not subjected to proper parliamentary scrutiny, it feels like rubberstamping of inadequate rules. It felt like the government had already decided what it wanted to do and just wanted to be seen to consult.

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: :

Yes, informal consultations where there are new changes, especially major changes, can help ensure more user friendly rules. However it would be good to have wider consultations every few years depending on how many changes the rules have been through, for example wider consultations can be held every 5-7 years to get feedback from the wider public including stakeholders that the Law Commission might not be in regular contact with for example self-applicants whom the Law Commission might not be aware of but whom the non-profit sector might come across in their operations.

Consultation Question 45: How can the effect of statements of changes to the Immigration Rules be made easier to assimilate and understand? Would a Keeling schedule assist? Should explanatory memoranda contain more detail as to the changes being made than they do currently, even if as a result they become less readable?

Please share your views::

Yes explanatory memoranda would be helpful but should be brief, with options to expand on the explanation if brevity comes at the expense of clarity or important information.

A Keeling schedule will confuse the general public but may assist legal practitioners. The Keeling schedule should be kept separate from the main rules to keep them readable eg it could be hyperlinked.

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::

Not answered.

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?

No

Please expand on your answer::

No the current method of archiving is not sufficient and a more sophisticated system is required. People should be able to check archives by dates (periods) when the rules were in force, or by the numbering existing at the time, or by topic or by reference to the legislation (statutory instrument or statute) which brought them into part of the law.

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::

Not answered.

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::

Laws/ rules are meant to be fair, clear and predictable to enable people to order their lives accordingly. When immigration rules are changed frequently they undermine all these core principles of legislation or a judicious governance system. Frequent or arbitrary/ unpredictable changes can be similar to changing rules on people mid-game. The impact this can have on peoples lives could be enormous, life changing or irreparable. For example if one came into the country on a certain criteria which is changed within the year or even a few years, they might have ordered their affairs in a way that is difficult to change.

At worst, frequent changes can amount to an abuse of power (by government) or be used to arbitrarily to target particular parts of society eg foreigners, students, refugees etc. They could also add to power in-balance and further abuse of power within social relations for example between employer and employee, sponsor and sponsored, student and school, main applicant and dependant. For example if immigration rules require a certain salary (say £25,000) when the employee was granted a work visa but this amount is increased (say to £28,000), the employee is left having to negotiate a salary increment with the employer and may risk being dismissed if the employer cannot afford or are unwilling to meet the increase.

Consultation Question 50: Do consultees agree that there should be, at most, two major changes to the Immigration Rules per year, unless there is an urgent need for additional changes? Should these follow the common commencement dates (April and October), or be issued according to a different cycle?

Yes

Please expand on your answer::

Implementation of and changes to immigration rules should be undergo a lot more scrutiny than they currently do. Restricting rule changes to a certain number per year will make the executive arm of government/ Home Secretary consider more carefully what changes are essential and most beneficial to the immigration system. It would give the government more time to consult fully (and wider) and carry out better impact assessments of the rule changes. Limiting the number of changes also give those who are likely to be affected by proposed rules time to question, challenge or lobby against the rule changes which is not the case when there are so many different rule changes being implemented at the same time.

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::

Not answered

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::

Not answered

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::

Advantages:

- 1 - May be more enviro-friendly.
- 2 - Ability to have personal documents and ID checked and verified at the in-person interview and then not have to send these to the Home Office so have them for use elsewhere eg as ID etc.
- 3 - Allows different people to access the form from different places provided they have the username and password.

Disadvantages:

- 1 - Increased costs from the in-person interview booking fees. Home Office application fees were already extremely high for most people and now having to pay an agent/ middle-man extra fees adds to already high costs. There have been groups demonstrating and lobbying for Home Office fee reduction yet this extra service has been implemented at extra cost to applicants.
- 2 - With paper applications one can fill whatever section they have information for and fill other sections later e.g. one can fill out general information but fill in the financial information later. Current online forms do not allow you to proceed to other sections before all 'essential information' is filled. It is therefore not easy to skip some sections without inputting dummy data (which could lead to un-rectified errors). It is also not possible to have an overview of the whole form if certain sections are left blank. The outline/ overview section should allow you to fill in sections at different times or skip from section to section even where data is missing. You should also be able to view and print the referee forms at the outset not only have access to those after filling every section. The different section should be "autonomous" or separated until at the point the application is to be submitted. It is only at the very end that unfilled essential fields should flag up as a major issue that would not allow one to signing the declarations or submit the application without those fields being completed.

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::

Not answered

Additional comments

Additional comments

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

Some of the numbering in this survey is confusing and might be wrong. It seems to refer to sections that are difficult to find in the actual consultation paper and summary, or it doesn't explain or it doesn't show clearly which section of the paper and summary a question relates to.