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

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About you

What is your name?

Name:

Jeremy Dunn

What is the name of your organisation?

Enter the name of your organisation:

The Incorporated Society of Musicians.

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:

Consultation Questions

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

Yes

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

Other

Please expand on your answer::

The ISM is the UK's professional body for musicians and a nationally recognised subject association for music. Since 1882, the ISM has been dedicated to promoting the importance of music and protecting the rights of those working in the music profession. The ISM supports almost 9,500 members who come from all areas of the music profession and from a wide variety of genres and musical backgrounds. The ISM campaigns tirelessly in support of musicians' rights, music education, and the profession as a whole. The ISM is a financially independent not-for-profit organisation with no political affiliation. This independence provides the freedom to campaign on any issue affecting musicians.

The ISM believes that the rules and accompanying guidance should also be drafted with cultural and lifestyle sensitivity to enable decision makers to understand which documents applicants in particular professions - in this case, musicians - and from diverse parts of the world will be able to supply.

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::

Yes - the ISM believes that the added cost to an applicant (musician) of engaging an Immigration professional to help an applicant (musician) understand complex Immigration Rules and guidance is costly to both the individual and business. The Immigration Rules should therefore be accessible to all applicants, including musicians.

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::

The ISM believes that the complexity of the immigration rules and guidance increases the number of mistakes made by applicants. An example of this is the Visitor's Visa for musicians performing at one or more permit-free festivals (e.g. WOMAD, Glastonbury, Glyndebourne) and at other cultural events that require Permitted Paid Engagement Visas. The current situation is that the rules and external guidance for applicants (musicians) and internal guidance for decision makers cannot easily be found together. In fact, the guidance for permit-free festivals in the Home Office guidance for Visit Visas just says the following: "Performers at one or more permit-free festivals: Letter of invitation from the organisers of each event, setting out dates required and details of any payments you will receive for taking part."

It does not mention that the applicant (musician) needs to read the overarching general guidance for Visit Visas. If an applicant (musician) accesses directly the guidance on the type of visa they wish to apply for, i.e. the Permit-Free Festival guidance, they could quite easily miss the fact that they must provide more documents than asked for in the section for Permit Free festivals. The applicant (musician) therefore has to read the entire guidance to understand this, not just the section of the guidance relating to permit-free festivals. In addition, the external guidance for applicants does not mention the internal guidance for the Home Office decision maker. It is clear that this level of complexity in how the rules and the guidance are presented leads to applicants not understanding what they need to supply to the Home Office.

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::

The ISM does not believe that there is enough data to be able to provide an opinion on the accuracies of these projected savings. However, the ISM does believe that clearer rules and guidance, as well as effective and sustainable decision making based on such a system, would be cost-saving for both applicants and the UK government in the long run.

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

Not Answered

Please expand on your answer::

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

Please share your views::

The ISM does not believe that the current guidance accompanying the Immigration Rules is helpfully presented and published. An example of this is that the external guidance to applicants for Visitor Visas differs from the internal guidance for Home Office decision makers (as referenced in Question 4). The Home Office internal guidance is much more thorough and complete than the external guidance for applicants. Essentially, the information in the guidance for applicants about the required documents is very limited, and does not fit with the tests given in the guidance to the Home Office decision maker. The two sets of guidance do not match which leaves the applicant at a disadvantage in not knowing what documents they will need to fulfil the genuineness test needed for a successful application. The ISM believes that all guidance must be the same and published and presented together, along with the relevant immigration rules with an explanation or summary of how they relate to each other. This will lead to better applications and better decision making.

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::

The ISM believes that the internal guidance for Home Office decision makers and for applicants (musicians) should be the same and should be accessed from the same place. The fact that applicants (musicians) cannot easily find and see the guidance on which the decision will be made leads to both poor applications and poor decision making that is not sustainable. The ISM also believes that the lack of clear guidance to the decision maker, which omits any cultural and lifestyle understanding leads to poor decision making.

Examples of this include the guidance for the Permit-Free Festival visa and Permitted Paid Engagement visa, which gives the decision maker no guidance as to what documents a touring musician would have or could be expected to have given the itinerant nature of their profession. This led to the debacle at WOMAD in which 2018 internationally-renowned artists were refused visas. This led to poor publicity for the Home Office and the United Kingdom, as well as a loss of revenue and reputation for the festival itself.

Another example of this were the refusals of visas for travelling artists going to the Edinburgh International Book Festival in 2018. Once again visas were refused for travelling artists based on a belief from the Home Office that the artists would not return home if the visas were granted, despite the fact there was no evidence that this had ever been a problem in the creative sector.

The ISM is also aware that for long periods of time applications by musicians were being refused by the Home office under the Tier 1 Entrepreneur route due to Home Office decision makers not understanding what a contract is under English Law. This led to a great many appeals and, after the appeal right was withdrawn, Pre Action Protocols and Judicial Reviews that were unnecessary and costly to both the Government and the musicians involved.

The ISM believes that the Home Office should engage with stakeholders in industries (such as the ISM for the music industry) when drafting guidance to facilitate an understanding of the issues involved in each profession and sector. The problems outlined above could easily be solved with good, clear guidance which engages with the particulars of the person the visa is aimed at, so the decision maker can make a better and more informed decision based on relevant and case-sensitive guidance. The ISM invites the Home Office to contact ourselves to aid in drafting such guidance to help understand the lifestyle of itinerant working musicians.

The permit-free festival visa is supposed to encourage international artists to come to the UK and add to our cultural and economic prosperity. Yet renowned

international artists were denied visas based on culturally-insensitive guidance that does not take into account that they were itinerant global artists and would not have had the same documentation as those from other professions, such as an office worker with a stable job in one place of work with a mortgage. The Home Office guidance or the Immigration Rules also do not take into account that large parts of the world have not got the same digital and data-driven economy or culture that is present in the United Kingdom. It does not take into account that many places in the world are still cash-based economies, particularly outside large urban areas. This lack of understanding leads to refusals of visas to people (including musicians) based not on any evidence that they will breach the conditions of the visa, but based on the potential unconscious bias of the decision maker that the lack of western digital and paper data means that the applicant (musician) will breach the Immigration Rules. In reality this means that a musician resident in countries such as Malawi or Bangladesh, for example, is likely to have a reduced chance of obtaining a visa to perform in the United Kingdom than a musician resident in New York City. This is a situation based on discrimination, rather than artistic value, talent or benefits to the British economy and cultural life. It is also not based on any evidence that an artist from a non-digitalised economy is more likely to breach the conditions of a visa than one who is from a digitalised economy.

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

Please share your views::

The ISM is concerned regarding the suggestion in this consultation that the majority of paper application forms will be withdrawn to be replaced by online versions. While this would appear to be cheaper and easier for the Home Office, we would suggest it would make applying to come to visit the UK harder for musicians in nation states where technology and internet access is not as prevalent as in the UK.

The ISM agrees that applications forms should be easily accessible and believes the Home Office should work closely with applicants, as well as representative bodies and sector organisations (such as the ISM which represents musicians), so they can understand what is easy and accessible to someone who is not an expert in the UK's immigration system.

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::

The ISM believes that while the analysis is correct, it does not address how austerity and the need to cut costs have impacted on the immigration rules. Clearly a system that is prescriptive and based on a tick-box format means that the Home Office decision maker can make decisions more quickly and with less thought, which could mean that a lower-grade, less-skilled civil servant can be employed to make the decision.

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::

The ISM agrees.

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

Please share your views::

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

No

Please expand on your answer::

The ISM does not believe the discretionary elements in Appendix V (Visitors) have worked well. The ISM refers the Commission to the refusal of visas for WOMAD in 2018 due to the decision makers not understanding or attempting to understand the difference between a travelling working artist and an economic or war-zone migrant. The discretionary elements are not supported by good, clear, lifestyle and culturally-aware guidance. Without such guidance, decisions are most likely made on the unconscious bias of the decision maker, supported by poor and generic guidance.

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

Please share your views::

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

Please share your views::

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

Please share your views::

The ISM believes that a less prescriptive approach to the Immigration Rules is necessary to take into account both the subtleties and individual nuances of individual professions and nationalities.

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

Please share your views::

Consultation Question 18

Other

Please expand on your answer::

The ISM believes that the Immigration Rules should only be made less prescriptive when culturally-informed, understandable and comprehensive guidance is given both to the decision maker and the applicant (musician). The applicant (musician) should be able to see clearly before making the application whether or not it is likely to succeed, and the decision maker should be able to identify from the guidance what evidence is likely to be available for the particular profession (in this case, music) and country the applicant comes from.

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::

The ISM believes that without appropriately-detailed and culturally and profession-based guidance being made available to the decision maker and the applicant, the test of “to the satisfaction of the decision maker” is too vague a test. Applicants (musicians) should know what is likely to satisfy the decision maker.

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

Yes

Please expand on your answer::

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::

Yes. The ISM believes that all inconsistencies should be identified and removed to avoid confusion to the applicant (musician). This can only benefit clarity and understanding for both the decision maker and the applicant (musician).

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

Yes

Option 3

Please expand on your answer::

Option 3. This seems to be the most clear and understandable route with the only disadvantages based on potential human error in the transposition of the rules. This should be easily overcome by efficient and thorough editing and auditing.

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

Please share your views::

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

Please share your views::

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

Yes

Please expand on your answer::

Yes. The ISM believes that the guidance should explain to the applicant exactly what common provision applies to them and what does not in an easy-to-understand format.

Consultation Question 26:

Not Answered

Please expand on your answer::

Consultation Question 27:

Yes

Please expand on your answer::

Yes. The ISM believes that the Immigration Rule should be as understandable and clear as possible for non-experts.

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

Please share your views: :

Consultation Question 29: Do consultees consider that tables of contents or overviews at the beginning of Parts of the Immigration Rules would aid accessibility? If so, would it be worthwhile to include a statement that the overview is not an aid to interpretation?

Not Answered

Please expand on your answer::

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

Yes

Please expand on your answer: :

The ISM believes an overview would be easier to understand and assimilate for non-expert users. Tables would be more likely be ignored by a non-expert reader.

Consultation Question 31:

Not Answered

Please expand on your answer::

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

Not Answered

Please expand on your answer: :

Consultation Question 33:

Not Answered

Please expand on your answer: :

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

Not Answered

Please expand on your answer: :

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

Not Answered

Please expand on your answer: :

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

Yes

Please expand on your answer::

Yes. The Immigration Rules should follow the best practice guidance.

Consultation Question 37:

Yes

Please expand on your answer::

The ISM believes that clarity and simplicity will help both decision makers and applicants (in this case, musicians).

Consultation Question 38:

Yes

Please expand on your answer::

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

Please share your views::

Repetition should only be removed if it adds to complexity.

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

Not Answered

Please expand on your answer::

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

Not Answered

Please expand on your answer::

Consultation Question 42: Which aspects of our redrafts of Part 9 (Grounds for refusal) and of a section of Appendix FM (Family members) to the Immigration Rules work well, and what can be improved?

Please share your views: :

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

Please share your views::

The ISM are unaware of any informal consultations undertaken regarding the Immigration Rules but would welcome such consultations in the future. The ISM invites the Home Office to contact us regarding the drafting of any immigration rules relating to the music industry to help them understand the industry, and the immigration rules and guidance that the industry needs. This will help to ensure the music industry remains a strong and vibrant economic and cultural force in the international arena.

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: :

The ISM believes that consulting individual sectors with stakeholders in particular immigration categories can only help reduce complexity, misunderstandings and help achieve transparency in the Immigration Rules. The ISM is willing to both consult with and assist the Home Office in helping to review any drafting of the immigration rules that pertain to the music industry.

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

Please share your views::

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

Please share your views::

Consultation Question 47: Is the current method of archiving sufficient? Would it become sufficient if dates of commencement were contained in the Immigration Rules themselves, or is a more sophisticated archiving system required?

Not Answered

Please expand on your answer::

Consultation Question 48: Do consultees agree that Appendix F (Archived Immigration Rules) and paragraphs 276DI to 276AI in Part 7 (Other categories) can be omitted from any redrafted Immigration Rules?

Not Answered

Please expand on your answer::

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

Please share your views::

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

Not Answered

Please expand on your answer::

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

Not Answered

Please expand on your answer::

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

Please share your views::

The guidance should be easily accessible from any reading of the rules, using hyperlinks to the relevant guidance and the guidance and rules being shown together in whatever format the rules are held in. An applicant (musician) should be able to see all the requirements of a visa in one place with all guidance for both the decision maker and the applicant together openly and transparently.

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::

The online system when it gives a drop-down menu is very prescriptive and doesn't cater for the nuances of individual circumstances. This brings a degree of prescription that this consultation seeks to eliminate.

Consultation Question 54: Do consultees agree with the areas we have identified as the principal ways in which modern technology could be used to help simplify the Immigration Rules? Are there other possible approaches which we have not considered?

Not Answered

Please expand on your answer::

Additional comments

Additional comments

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

The Immigration Rules – particularly regarding Visitor Visas (including Permit-Free Festival Visas & Permitted Paid Engagement Visas), Tier 1 Exception Talent and Entrepreneur Visas, and Tier 2 Visas– are crucial to the continuing success of the UK's music industry, which is worth £4.5 billion to the UK economy. Any changes to the Immigration Rules will affect musicians' ability to perform in the UK and potentially threaten the UK's soft power on the world stage.

As outlined in the ISM's response to this consultation, decisions made by the Home Office to reject certain Visitor Visa applications (for example for Permit-Free Festivals in the case of WOMAD and the Edinburgh International Book Festival) have meant that internationally-renowned musicians and artists were unable to perform at UK festivals. Not only did this cause poor publicity for the Home Office and the UK, but a loss of revenue and reputation for the festivals themselves, which could in future lead to the UK's festivals and cultural events becoming less desirable for musicians, threatening the UK's reputation on the cultural world stage.

The ISM is also concerned about the future of Tier 2 visas given the Immigration White Paper that was published in December 2018. The £30,000 salary threshold that would be required by Tier 2 visa applicants is not suitable for musicians who are highly-skilled but not usually highly-paid. This move would represent a dramatic and detrimental change in the accessibility of both EU and global musical talent to UK music organisations.

The Home Office should therefore consult representatives from the music sector, including the ISM, on their proposed changes as soon as possible.