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

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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::

The Rules have become too long, repetitive, hard to navigate and are often poorly drafted so are hard to understand without additional guidance. The principles set out in paragraph 1.27 should make a positive difference, although getting the right balance between them might take some time.

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 – we agree that everyone who has to apply under the Immigration Rules should be able to understand the requirements they must meet for their applications, and after leave has been granted and the grounds on which they may be able to challenge refusals. This would be the case in any event, but is particularly important when most applicants cannot afford immigration lawyers and/or have no access to them. International student advisers in educational institutions provide a valuable immigration service to thousands of international students, but most are not legally qualified. More accessible Rules would be of great benefit to them, their work and their student clients.

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::

Complex Immigration Rules can lead to misunderstandings by Home Office staff who write guidance and provide policy answers, even if they are responsible for drafting the Immigration Rules. This is particularly the case where the Immigration Rules are drafted in such a way that they do not achieve the original policy intention, but are not corrected before publication. This in turn can increase the number of mistakes made by applicants. For example, 'established presence' was a provision in Appendix C which meant some Tier 4 applicants did not have to provide evidence of the full maintenance requirement. The definition was amended five times, though it was not added to the Immigration Rules until 2010 and was removed in 2013. The definition contained six requirements for two separate sets of applicant in one paragraph. This definition was set out in guidance, but did not accurately reproduce the definition in the Immigration Rules until April 2011, which was when this paragraph in the Rules was reworded and restructured to make the requirements for each set of applicants clearer. Many students were refused leave on the grounds that they did not meet the definition, but those responsible for it appeared not to understand it.

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 do not have sufficient knowledge of costs to answer this question. However, it would be logical to assume that simplified Immigration Rules would save time, and therefore money, for applicants, advisers, caseworkers and courts.

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

Yes

Please expand on your answer::

Yes, although Home Office staff do not always appear to understand the principle set out in paragraph 3.20 of the consultation document (the Rules do not directly bind applicants). For example, guidance states that a student who stops studying no longer has valid leave, independently of curtailment or other Home Office action. Some of these incorrect statements (relating to work) have been amended since this consultation was published.

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

Please share your views::

Using the Tier 4 policy guidance as an example, this was updated and published four times in 2018 in line with the Immigration Rule changes. The glossary of terms and the table confirming changes made to the preceding Tier 4 policy guidance near the beginning of the document are helpful. However, the table of changes would be even more helpful if it were complete – we usually identify additional amendments which have not been noted, which means we have to check the whole document every time in spite of the table of changes.

Guidance does not always reflect the latest rule changes. For example, the Immigration Health Surcharge (IHS) increased on 8 January 2019 but the Tier 4 policy guidance published after this date, on 11 January 2019, did not include the revised IHS fee. Similarly, paragraph 245ZX(b)(i) of the Immigration Rules changed in January 2019 to permit part-time Tier 4 (General) students to extend their leave in the UK, but this was not reflected in the Tier 4 policy guidance either, even though there were few other amendments which came into force on that date.

It would be more helpful if the guidance were shorter, and did not reproduce the Rules but instead illustrated their provisions through more examples, ideally based on casework.

Recently, it has sometimes taken over a week for guidance to be updated following Immigration Rules changes, which means that guidance relied on by applicants and caseworkers is often out of line with the legal requirements in force. For example, the Immigration Rules changed on 6 April 2019, but as of 17 April no Tier 4 guidance documents for sponsors, applicants or caseworkers have been updated. When changes came into force on 6 July 2018, the Tier 4 sponsor guidance was not amended until 13 July and the Tier 4 policy guidance for applicants was out of date until 19 July, without explanation or warnings.

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 guidance is an opportunity for the government to further explain their Immigration Rules, provide interpretations where necessary, and provide concessions which are more generous than the Rules. It can and should also be used to explain things that are unclear in the Rules, especially where there can be more than one interpretation of the Rules, so that applicants and case workers are clear how to apply the Rules. Where there are multiple guidance documents, all of these should give consistent and clear explanations of law.

Below are some examples of where this has not happened:

PBS dependant guidance and Rules

Child born in the UK

The drafting of paragraph 319H(j) of Part 8 of the Immigration Rules, under the sub-heading 'Family members of relevant points-based system migrants' allows for two interpretations of the conditions a child born in the UK to a Tier 4 student/ student would need to meet in order to be eligible to apply for leave to remain (inside the UK). The PBS dependant policy guidance does not give any guidance on which of these interpretations is to be applied. The Modernised Guidance for family of PBS migrants (guidance for caseworkers) appears to suggest the more generous of the interpretations is to be applied. It should of course be the case that the Rules are unambiguous and clear, but where they are not, guidance to applicants and to caseworkers needs to offer consistent and clear interpretations.

Both parents of PBS dependant child must be lawfully present in the UK

For the child of a PBS migrant to be granted entry clearance or leave to remain, one of the criteria that must be met (in paragraph 319H (f), part 8 of the Immigration Rules) is that both parents are lawfully present in the UK or one is lawfully present and the other is applying at the same time as the child (unless exception apply).

This would mean that if a PBS migrant leaves the UK and their child and the other parent of the child apply for entry clearance to come to the UK as dependants of the PBS migrant, a common-sense interpretation of 'lawfully present' would mean such an application would be refused.

Having sought advice from the Home Office about this, we were told that 'lawfully present' equates to having leave. However, this interpretation has never been made explicit in the guidance (which suggests that caseworkers would also not know to apply it). This, in turn, means the 'common sense' interpretation might be applied and gives rise to a situation where a child who is with both its parents outside of the UK (one with immigration permission as a PBS migrant and one who is applying at the same time as the child for PBS dependant leave) would be refused leave.

It would be helpful if guidance is used to explain both to applicants and to caseworkers what is meant.

PBS migrants who are 'low risk' nationals and their dependants who are 'low risk' nationals

The Rules and guidance describing when the dependant(s) of a low risk PBS migrant can benefit from differentiation arrangements for 'low risk' nationals have been out of synch with each other in the most recent iterations of updated guidance and changes to the Rules.

The Rules in Appendix E stipulate the conditions which need to be met for the dependant(s) of PBS migrants to be able to benefit from differentiation arrangements. However currently they do not require that the Tier 4 student be a 'low-risk' nationality for their dependant to benefit from differentiation arrangements. We understand Rules were drafted in a way that was unintentionally generous to applicants and in direct contradiction to, and more generous than the policy intention (a closer description of which appeared in the policy guidance).

It was confirmed to us that the relevant paragraphs of Appendix E of the Immigration Rules were going to be amended to reflect the policy intention. However, instead the guidance was altered making the discrepancy even greater and giving rise to a situation where the Rules were more generous than the guidance, and the guidance was even more restrictive and further from the policy intention. Statement of Changes to the Immigration Rules HC1919 brings in changes to Appendix E to closer align the Rules with the policy guidance and with the policy intention. However, again it has not been carefully drafted giving rise to two interpretations – one being that the PBS migrant and their dependant(s) need to be of the same 'low-risk' nationality in order for the dependant to benefit from the differentiation arrangements.

Short-term student guidance and Rules

There is no published guidance for migrants applying under this route, only for caseworkers. Therefore, it might be the case that applicants do not look here to find the many concessions that apply to short-term students. It would be helpful if there could be one guidance document, to be used by both applicants and caseworkers too.

There has been an ongoing tendency to add into this guidance provisions which applicants come to rely on, but which can be changed (and often are changed) without warning and without thorough consultation. We have consistently asked that provisions which are in guidance be added to the Rules, so that there is less danger of these provisions being removed without warning.

Sometimes, there is incorrect information in the guidance, where care hasn't been taken to ensure that the Rules as they apply to the different strands of the route are accurately reflected in the guidance. For example the guidance says that a person with STS (Child) leave must intend to leave within 30 days of the end of their study. However, this is not stipulated in the Rules.

The Tier 4 Rules and policy guidance for Tier 4 migrants

As noted in answer to question 7, the Tier 4 guidance was not properly updated in January 2019 to reflect two important changes: the increased Immigration Health Surcharge and removal of the restriction on part-time Tier 4 students' ability to apply for leave in the UK.

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

Please share your views::

Some application forms are easy to find, for example, Tier 4. However, the process and forms for applying for a replacement biometric residence permit (BRP) are not always clear. Home Office information often makes assumptions, for example, that a person who loses a BRP in the UK will always apply for a replacement in the UK. However, the person is able to travel and may only consider how to deal with the problem after having left the UK, at which point, an applicant is often unable to find details of the relevant process and form.

If all relevant Immigration Rules and guidance were grouped together, this could benefit the structure of, and questions in, the forms. Hopefully, it would help those who create the online forms to know which questions are needed for different applicants, and which are redundant or risk leading an applicant down the wrong route. Our experience of being consulted is that we have spent many hours attending meetings and collating screen shots to show where forms go down the wrong route or ask questions which are incorrect or not clear, but our feedback and that of our many institutional members is regularly not taken into account.

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::

We agree with this analysis. After Pankina, the Tier 4 (General) student Rules increased from 14 to 20 pages (our consolidated version including relevant Appendices). After Alvi, they grew to 37 pages, and are currently 44 pages long. An additional factor for the Tier 4 (General) student Rules from 2014 was the number of changes to the study condition and the academic progress requirement, both of which increased in length from a paragraph to more than one A4 page of text each. This was largely the result of a policy intention to prevent most changes of course which had foreseeably but apparently unintentionally harsh consequences, partially corrected by adding exceptions to, rather than removing restrictions from, the relevant provisions in the Immigration Rules.

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. Appendix C of the Immigration Rules has become more detailed and complex, in a similar way. For example, it stipulates the requirements which must be met if a student wishes to use bank statements in the name of parents. However, it also states that joint accounts are permissible only if one of the named account holders is the applicant. This meant that students could be, and have been, refused leave because they used bank statements in the names of two parents, though this was quite common. It took several years of querying this before a concession was added to the policy guidance, though there was never a policy objection to the use of such bank statements. In our experience, greater prescription in the Immigration Rules does not result in less need for concessions in guidance, and the opposite may be true.

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::

The evidentiary requirements for Tier 4 maintenance, set out in Appendix C, have been amended at least 14 times since April 2010, including three times since January 2018. The underlying immigration objective has remained the same, ie students must provide evidence that they hold fixed sums of money to cover their fees and living costs in the UK.

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

Yes

Please expand on your answer::

We agree that having discretionary evidential Rules within Appendix EU is welcome, although its usefulness is currently heightened by the fact that there is Home Office policy to find in favour of an Appendix EU applicant and that therefore there is a long, non-exhaustive list of acceptable evidence. It would become less helpful if this policy changes (in this case a list of accepted documents with specific requirements would be helpful, where a caseworker must accept the documents as they are presented to them, and not have the discretion to refuse on the basis that they want more information). The use of cross-departmental data in theory is a good idea, but there should be an opportunity for applicants to cross-check any data before the Home Office uses it in order to ensure that it is the data belonging to the applicant, it is correct, and does not lead to unforeseen and unintended consequences.

The absence of a less prescriptive approach within Appendix V, is again welcome where the policy intention (which is communicated to BFOs and HO caseworkers) is that a generous interpretation be applied in favour of the applicant. However, where the absence of a prescriptive approach results in an overly restrictive interpretation or penalties which were not intended, we would favour a more prescriptive approach.

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::

It is, as long as length is not caused by unnecessary repetition or overly detailed provisions, and full use is made of technology to facilitate navigation.

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::

We agree with the advantages and disadvantages set out in chapter 6 of the consultation document. Although we dislike the level of detail in the Immigration Rules, for all the reasons given, it has in many ways been helpful for Tier 4 sponsors who need to assess and explain to large numbers of student applicants their chance of a successful application and manage the risk of losing their Tier 4 sponsor licence. The main advantage of prescription in the Immigration Rules is that we are usually given three weeks' notice of changes, whereas we do not know what will appear in guidance until it is published. Guidance is not published until the day it comes into force, and often it is published after then. The way in which caseworkers exercise discretion is not known until leave is granted or refused.

We would see greater advantage in less prescription in the Immigration Rules if proper consultation preceded changes to the Rules and guidance, and if guidance were published before it comes into force. It should be easier to amend guidance at relatively short notice, although we have noted that some errors and omissions are corrected very quickly, whereas others, even when they mean that the Rules and guidance are out of line with each other, are not. We have not been given reasons for this disparity, so greater clarity on this would be helpful.

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::

Yes, as Immigration Rules are often changed without proper consultation, cannot be amended quickly and absurd results can ensue. For example, the Rules have in the past stipulated that educational certificates must be produced in paper format when they were issued only online. Similarly, USA study abroad students were required to obtain a UK NARIC certificate confirming the level of their USA course, but UK NARIC does not issue such certificates for courses which have not been completed.

However, a policy of evidential flexibility would need to be exercised consistently and guidance must not be removed and changed at short notice, as has previously happened. Guidance should provide examples of evidence which will be accepted and, if relevant, evidence which will not be accepted. The reason for requiring evidence should be made clear so that applicants can attempt to assess whether their evidence meets the stated purpose. Student applicants and many

advisers are now anxious when given flexibility, for example English language assessment by higher education institutions. Some have in the past found it difficult to know what is acceptable to caseworkers as practice can be inconsistent, sometimes apparently depending on the applicant's nationality or the sponsoring institution, though this is not made explicit.

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::

In relation to the student Immigration Rules, areas connected with Tier 4 sponsorship could be less prescriptive. This could include academic progress, which is now ridiculously complicated and can prevent students from applying in the UK to complete a course they have already started. Sponsors should also have greater flexibility in allowing students to take a relatively short break from study, for example, for health or family reasons, without withdrawing sponsorship. The maintenance provisions have become very lengthy and do not accurately reflect the format of evidence to which applicants from around the world may have access, or the sources of funds, for example family members other than parents. While the Immigration Rules could be less prescriptive, guidance on matters such as maintenance would probably need to be quite detailed in order to avoid subjective refusals on these grounds and to aid advisers.

Consultation Question 18

Yes

Please expand on your answer::

However, we would be concerned that any matters might be left to the judgment of officials on their own, for the reasons given in answers to other questions. Caution is also needed when considering the reasons for making changes. This is because amendments which can have a significant impact are often described as having been made for the purpose of 'tidying up' or 'clarifying' existing policy.

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::

Yes, credibility interviews have introduced subjectivity into the Points-based system of immigration and decision-makers appear to have widely varying levels of satisfaction. The only means of challenging refusals for most applicants is administrative review, which puts the decision back into the hands of a Home Office caseworker. As long as the immigration system continues to lack independence, transparency and objectivity, we can foresee many difficulties with any form of words similar to that used in the New Zealand operation manual.

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::

The requirement for ATAS clearance is now a study condition for most immigration categories so Appendix 6 should go in Part 6, along with what is currently Part 15. If possible, please avoid naming a part 'Other categories'. We would prefer to have more parts labelled clearly than to have unrelated categories 'hidden' together under such a title.

We are not sure that Tier 1 (Exceptional Talent) fits easily into a category called 'Business and investment' or that exceptional talent and innovators/entrepreneurs belong in the same category as investors. Could 'Endorsed work routes' be a heading, or 'Innovators and Exceptional Talent'? Alternatively, would separate categories for Employment and for Innovators (previously Entrepreneurs) be possible? Investors could have their own heading.

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::

It is important that alternative terminology is used if meanings differ so everyone can be clear about the desired effect, and conversely that provisions are consistent if the intention is that they should be interpreted in the same way.

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

Option 3

Please expand on your answer::

Option 1 seems to do little to improve the current situation, in which an enormous document serves only to deter readers from attempting to tackle it.

Option 2 wrongly prioritises the consideration of statements of Rules in Parliament, when our experience is that these statements receive virtually no consideration by parliamentarians when they are laid in any case. The interests of users of the immigration system should be prioritised over those of parliamentarians, who are much more likely to need to get to grips with the requirements that apply to a particular category of entrant when they meet a constituent in their surgery, rather than at the point changes to the Rules are laid.

Option 3 is our preferred option of the three. The involvement of editors with legal training will help to maintain the pressure on drafters to get their Rules right, and we do not see any disadvantage in applicants being able to rely on the more favourable approach if a booklet and the Rules laid in Parliament contradict one another.

Is there any reason why a fourth option should not be considered, with:

- one editorially produced booklet dealing primarily with the requirements of a particular category (and containing at the end simple signposts to extra requirements that exist in the common provisions, all of which have potential to be relevant but only some of which actually will be – for example, in the case of Tier 4 these will include the ones on ATAS, police registration, TB certificates, dependants etc); and
- a separate editorially produced booklet dealing exclusively with the common provisions that can potentially be applicable to that category of entrant, clearly segmented into different relevant sections, and with simple introductions to each section to help readers identify whether they need to read further or can skip to the next section?

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

Please share your views::

We are not aware of any.

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

Please share your views::

We are not aware of any.

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::

We currently have to query with the policy team whether such departures are del berate. A requirement to highlight and explain departures would be very helpful, as it is not always acknowledged that they exist and can create difficulties.

Consultation Question 26:

Yes

Please expand on your answer::

The use of a symbol is particularly useful. Bold, as used in Appendix EU, confuses headings with text and the impact of a change is not immediately apparent when described in the statement of changes. The use of bold has not been carried across to the online version, so its point has already been lost.

Consultation Question 27:

Yes

Please expand on your answer::

All principles should improve the current situation.

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 :

New paragraphs for new content are preferable to subheadings as it can become too easy to insert text which is not directly related to current contents, but doesn't seem to fit anywhere else, if it has a subheading. The attempt to avoid subheadings, unless the relevant section really cannot be split and is very long, could help with the organisation more generally of a whole section.

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::

Tables of contents would also need links to sections. If overviews are included, such a statement is needed.

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 :

Our preference would be for tables of contents. They are of greater practical use, less subjective and it would be easier to ensure they are kept current.

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: :

The current mix of numbers and letters and abbreviations is confusing. Numbers are clearer and it will immediately be obvious if the number of appendices is too high.

Consultation Question 33:

Yes

Please expand on your answer: :

More regular consolidation would help with re-setting numbering and consistent use of this system would flag up when re-writing is needed.

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

Yes

Please expand on your answer: :

Yes, as long as the Rules are not inadvertently, or deliberately, changed as part of the process. The current mix of four or more different styles is difficult to use, especially when one set of Rules refers to others.

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: :

Numbered paragraphs are easier to read and to maintain.

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::

The use of definitions has been problematic. Recently, the definition of "professional sportsperson" was changed, although described as 'clarified', in such a way that anyone subject to a prohibition on work as a professional sportsperson cannot undertake any employment if they have in the last two years represented their nation in sport or intend to work in sport in the future. This has effectively prevented students, including those who have already started their course, from undertaking work placements which form part of their sports course, as well as taking part in university competitions and volunteering in community sports groups.

Consultation Question 37:

Yes

Please expand on your answer::

This would save a lot of time and facilitate understanding. Currently, paragraph 319A (PBS dependants) refers to paragraph 277, which in turn refers to paragraph GEN1.2 of Appendix FM. As neither of the last two is generally of relevance to PBS dependants, an adviser unfamiliar with these sections may also need to read "Transitional provisions and interaction between Part 8, Appendix FM and Appendix FM-SE", when the main point is that the applicant must be aged 18 or older.

Consultation Question 38:

Yes

Please expand on your answer::

Yes, for the reasons given in Law Com No 382. Signposting within the Rules should reduce duplication and increase consistency. It is important that other sources of law should be referenced with links to the legislation. It is more accurate than general references to the gov.uk website, where it can be difficult to find the relevant information. It is also not obvious to all readers that other legislative sources inform provisions in the Immigration Rules.

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::

We agree that the elimination of repetition would be beneficial, if it makes the Immigration Rules more concise. HC 1919 contains an example of very repetitive

drafting: the long list of definitions in Annex 1 of Appendix EU is largely repeated in Annex 1 of Appendix EU (Family Permit). Occasionally, a different definition is attached to the same term, which should be avoided.

One advantage of the suggested approach that has not been mentioned is the reassurance it provides to readers that the same, consistent interpretation applies regardless of what kind of application is being made. However, to assure them of this, it is essential that every reference to a defined term is marked with a #. For example, in the redrafted paragraph 4.4.1(h) (page 250), there is currently no # next to the term "entering the UK illegally" even though the term "illegal entrant" is defined elsewhere. Similarly, is there any reason why the terms "condition" and "deception" should not be defined?

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?

Yes

Please expand on your answer::

We agree with the proposed drafting guide and are not aware of other sources or studies. We very much hope that someone in the Home Office will have responsibility for ensuring that any guide which is adopted is applied at all times and that this is enforced before publication, including testing of hyperlinks. Over the years, we have observed many different writing styles in guidance and the Immigration Rules, to which we have had to adapt, which is not an ideal approach. Any drafting guide should be made publicly available so that others can query drafting which is not clear and/or suggest alternatives, in line with the guide. We have sometimes found that redrafting a provision is the easiest way to demonstrate problems with the current wording.

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

Yes

Please expand on your answer::

It is much easier to understand the general aims, as well as the specific requirements, of both redrafts. At least some of the suggestions appear to have been followed in Appendix W, a new section of the Immigration Rules drafted since this consultation document was published. This new appendix is much easier to navigate and understand than other recent additions to the Immigration Rules. We prefer the use of a hash next to a defined term (as in Appendix 4 of the consultation) than the use of italics (as in Appendix W), as it more clearly highlights that a term is defined and requires a link.

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: :

Appendix FM – The redraft of Appendix FM has helpfully removed the need for cross-referral that takes place in the current version of Appendix FM. For example, E-ECP 2.9 refers to another provision of the Immigration Rules outside Appendix FM. E-LTRP.4.1A (i) also refers to other provisions of Appendix FM. The re-draft has simplified both provisions so no cross-referral is necessary either in another part of the Immigration Rules or within Appendix FM itself (ie paragraphs 12.1.8 and paragraph 12.8.3 (a) of the re-draft).

The numbering is simpler and easier to understand in the re-draft. The provisions in the current version of Appendix FM (EC-P, S-EC, LTRP, ILRP etc) can become cumbersome and confusing for anyone, particularly those who are not used to reading legal documents.

The redraft helpfully merges a number of the provisions that are applicable to entry clearance, leave to remain and indefinite leave to remain applications. For example the 'relationship requirements' apply across the board rather than having separate relationship requirements for entry clearance, leave to remain and indefinite leave to remain as is the case with the current Appendix FM. This is useful as it avoids repetition. Where distinction is necessary, this is pointed out. For example, paragraph 12.1.2 of the redraft makes it clear that the provision applies to entry clearance and leave to remain applications only.

Although the numbering is simpler in the redraft, there appears to be a glitch at one point with the numbering as the financial, English language and ILR sections all refer to paragraph 13 in places. There is no paragraph 13 in the redraft.

Part 9 (Grounds for refusal) – A number of the provisions are clearer and simpler to understand in the redraft as opposed to the current Rules (paragraph 4.22 (d), paragraph 4.32, paragraph 4.4.1 (a) (i) and (ii), paragraph 4.4.2 (b) (ii), paragraph 4.4.5, paragraph 4.4.6 (b), paragraph 4.5.2 (d), paragraph 4.6.1 and paragraph 4.7.1 (g))

As long as the reference to 'Appendix Armed Forces' is referenced somewhere else (in the Appendix Armed Forces itself perhaps), we agree that removing this from paragraph 4.7.1 (a) clarifies this provision.

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::

We were shown a draft of Tier 4 changes in November 2018 which introduced a definition of "higher education provider". The intention was to ensure that Tier 4 sponsors required to register with the Office for Students, and equivalent regulatory bodies elsewhere in the UK, would benefit from the 'privileges' currently awarded to recognised bodies and bodies in receipt of public funding as a higher education institution. Subsequent amendments throughout the Immigration Rules were inconsistently worded, so we set out our questions in writing, discussed the matter with the policy team member of staff and provided sample redrafting of the provisions. Many of our suggestions were adopted and we, and hopefully others, were clearer about the policy intention.

On other occasions, we have pointed out where cross-references are inaccurate, and where a change to one provision conflicts with, or requires a change, to others. For example, when exemptions were added to the Rules on academic progress in Appendix A, we highlighted that they would have little effect in practice

without a change to the study condition in Part 6A. Although it took some time, the study condition was later amended.

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 :

It could help reduce complexity if consultation takes place in a timely fashion and comments are given serious consideration. We are currently asked for comments on drafting, not policy, on occasion and usually at very short notice. Although we can point out when definitions or defined terms are needed, when references to paragraphs are incorrect or query what the intended outcome is in order to assess the effectiveness or otherwise of the drafting, there is no real discussion and it is usually too late to make changes we might have been assured on a previous occasion would be incorporated, but which have been overlooked again. Consultation or review of all provisions would be needed. When we see draft Rules (and this largely depends on who is in the policy team at any time), we are shown only study-related changes. However, other provisions, including validity and general grounds, may have at least as great an impact on our work and on our members' clients.

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::

We have created consolidated versions of the Tier 4 Immigration Rules since they first came into force in 2009. They are similar to a Keeling schedule and provide a very helpful preview and historical overview of the effect of amendments. It would be very helpful if such a schedule were prepared for all changes, ideally before publication. It would highlight to policy makers when their drafts do not achieve the desired outcome and could be corrected before they are ordered to be printed, thus potentially reducing the number of statements of changes published each year.

Explanatory memoranda should contain more detail than is currently the case. We regularly read changes to the Immigration Rules, fail to understand the underlying policy intention (and sometimes whether what has been achieved is deliberate) and then check the memorandum, only to see the Rules reproduced, or the change not mentioned. We very rarely find enlightenment in the memorandum and instead have to contact the policy team. It would save time if the memorandum explained the policy intention, which we could then more easily test against the reworded Rules.

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::

As well as, or instead of, setting out commencement dates at the start of each statement of change, explain next to each paragraph when the provision comes into effect, a task we currently have to carry out before we can start to analyse the changes. The note should contain the date and also make clear in each case whether the commencement date affects decisions, applications or date of assignment of a certificate of sponsorship or a confirmation of acceptance for studies – symbols could be used for this. As long as it is carried out accurately, it would also help ensure accuracy when statements of changes are incorporated into the online version of the Immigration Rules. Recently, some changes were made online before they came into force, probably because the implementation provisions were confusingly worded and some changes came into effect only four days before others (HC 1534 page 2). Alternatively, publish separate documents (on the same day), each containing only changes which come into force on the same day.

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?

Yes

Please expand on your answer::

It could be helpful if dates of commencement were contained in the Immigration Rules themselves as long as they don't obscure the text. If there is to be a gap between consolidation and publication of the archive, there needs to be a link to the previous version of Rules which have been amended.

The current system is adequate, but should, at the start of the archived version, link to the statement(s) of change which amended the previous version, and refer to the relevant paragraph numbers in it and the categories of leave affected. This would make it easier to see at a glance where changes have been made.

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?

Yes

Please expand on your answer::

They would, however, need to be retained in the archive.

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::

At its most extreme, recruitment to education institutions can suffer. Refusals can rise, which is obviously unacceptable for students, but also affects the Tier 4 sponsor licence of institutions. For example, the way in which limits on periods of student leave is calculated was changed in the month of August, and English language assessment became a requirement for all courses in April, in neither case with transitional provisions although students can be recruited a year or more before they apply for leave. Students need to be able to plan their lives and immigration applications well in advance and changes to key requirements at short notice can have a serious effect on them and the UK's reputation. The cost to sponsors of having to keep up with all changes to the Immigration Rules and their

accompanying guidance is huge and missing important changes can lead to the loss of their Tier 4 sponsor licence. This is in addition to all other significant legislative and other changes affecting the education sector.

Meaningful consultation, carried out well in advance of any proposed changes, could help address these problems. Although meetings and other consultations take place currently, the sector is not routinely provided with advance information about changes and we are rarely given details of how any new provisions would look and work. Fewer changes would help and could be possible if consultation flags up potential problems at an early stage.

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::

Yes, for the reasons given in answer to Question 49. The commencement dates are perhaps of less concern in relation to education than the length of notice of significant changes. Tier 4 confirmations of acceptance for studies (CAS) are usually assigned about three months before a student's course start date, which is most often around September or February, meaning CAS are assigned in large numbers in June and November. This means that changes coming into effect in April and October generally work with the academic year, but at other times can create significant difficulties in recruitment and in explaining changes to students in time for their applications.

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?

Yes

Please expand on your answer::

Possibly. It would require regular checks to ensure links are functioning and go to the correct place. A large number of links could get the reader lost, though automatic opening in a new tab or window could help, if used consistently. It is perhaps not a phone-friendly way of constructing a document.

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::

We would like guidance, as far as possible, to link directly to relevant provisions in the Immigration Rules (hyperlinks for online, exact reproduction for paper). The current practice involves rewriting provisions. This often results in guidance which may reflect the policy intention of the person who writes the document but conflicts with the wording of the Immigration Rules. It has also led to guidance not being updated in line with the Immigration Rules. If the Rules are not sufficiently clear for guidance, this should be a trigger for rewriting the Rules rather than a reason to have conflicting provisions in guidance and the Rules. If the Rules are restructured in line with the proposals in this document, it would be helpful if the start of each section could link directly to all relevant guidance.

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::

Student applications moved from paper to online in 2014, and we immediately saw a reduction in the number of applications rejected as invalid for non-payment of the fee or failure to complete mandatory sections. Advisers in institutions could spend the time previously spent on dealing with large numbers of paper applications on advising on evidential and other more substantive matters.

The main advantage of the in-person appointment system introduced in 2018 is that applicants can retain their travel and other documents. This will result in fewer losses of such documents by the Home Office. It will also enable applicants who need to withdraw their application or whose applications are refused to leave the UK more promptly, thus preventing or reducing periods of overstay.

The appointment system does, however, have problems. Applicants are required to choose the type of service (and level of fee) before they can see the availability of appointments in different locations. This has meant that applicants have paid large sums for a quick decision, only then to discover that they must add to the cost with travel and accommodation expenses, or attend more locally and not receive a decision as quickly as they wanted. In some cases, the security code was not emailed to applicants after they had paid for their application, and the helpline was not answered for several days, so applicants were unable to book an appointment. Tier 4 sponsors which tried to obtain help from their Home Office Premium Customer Service (annual fee of £8,000) were told that the appointment system was nothing to do with the Home Office so they could not help. Free of charge appointments are hard to obtain and can involve lengthy waits. The lack of appointment centres in some towns and cities, including Edinburgh and Oxford, means some Tier 4 sponsors feel that they are being forced into paying thousands of pounds to have pop-up services so that their students do not waste time and money travelling to attend appointments when they should be studying. Most students receive help with their applications from their Tier 4 sponsor so do not need 'value-added' services, but end up having to pay more to attend the centres offering those services simply because they either have no core centre near them or are unable to obtain an appointment at one. For example, a student who lost her biometric residence permit ended up spending over £1,000 on an application which is listed as costing £56, and which took two weeks to process. The system needs to be more transparent, particularly in relation to the availability of appointments and fees, and it needs to provide a larger number of application centres, particularly those offering a free service.

The online system has never worked as well as it should, perhaps partly because applicants are required to enter a lot of information which is already available to caseworkers through the confirmation of acceptance for studies and documentary evidence, which adds to the complexity of routing through the application form. This has resulted in applicants having to provide answers which are not fully accurate or relevant to them, in order to reach the next question which they do need to answer. This is extremely anxiety-inducing for both applicants and advisers. The lack of a paper version of the form means that advisers have to spend a lot of time attempting to complete the form with every possible variation, so that they can produce guides for their students on how to answer questions. Until this issue is fully resolved, by asking only questions of relevance to a specific applicant, every online form needs a free text field so that applicants can fully explain why

they have answered questions in the way they have and not later be accused of having lied.

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

Yes

Please expand on your answer::

Current tools are not sufficiently sophisticated. For example, people who say they want to study in the UK for six months or less are given only the option of applying for a short-term student visa, whereas Tier 4 may be more appropriate. Similarly, the tool does not take into account that applicants often have more than one purpose in seeking to come to the UK.

Additional comments

Additional comments

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

UKCISA supports international students and those who work with them, hence our focus in this response on student-related Immigration Rules and guidance. We very much welcome the approach taken in the consultation, which accurately reflects many of our concerns about the current situation.