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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:

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What is the name of your organisation?

Enter the name of your organisation:

Universities UK and UCEA

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

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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?

Other

Please expand on your answer::

UUK agrees with most of the principles. UUK suggests a replacement for the term 'durability (making the rules apt for amendments)' with 'adaptability' however, or in addition to this term. The revised Rules must serve the future immigration system in such a way that any changes, including unforeseen changes are accounted for as much as viably possible. Ensuring the Rules are adaptable would prevent the need for constant updates.

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, UUK and UCEA agree that the Rules must be accessible to a non-expert user. Currently, the lack of accessibility demands unnecessary costs and resourcing from HEIs to ensure the correct immigration advice is provided for applicants. In regards to staff sponsorship, Russell Group universities, for example, spent around £7.3 million on supporting immigration applications for staff with £172K on fees paid directly to UKVI and £98K on staffing costs during the academic year of 2017-18. Furthermore, on average, £712K is spent on supporting immigration applications for students. UUK conducted a survey investigating the financial burden of Tier 4 sponsorship to universities. Survey results suggest that the sector spends over £40m per year on Tier 4 compliance duties, which translates to an average of £240k per institution. Accessing the Rules, particularly in more nuanced, context-specific cases, should not be strongly dependent on UKVI assistance or legal specialist advice for a non-legal user.

In relation to the applicant, international visitors that do not come through sponsored routes would particularly benefit from the Rules being accessible. In most

instances, they are unable to rely on the HEI or other sponsor for guidance on their application and unable to afford legal fees for individual advice. Also, the Rules must specify more clearly reasons for refusal without being left to the discretion of the applicant. UUK and UCEA suggest that a wider categorisation of required documents in Part 6A of the Rules may enhance accessibility for Tier 2 applicants from both low-risk and high-risk countries.

UUK suggests further that any amendments or omissions made to the future Immigration Rules are not simply specified as 'deleted' but rather, include information on what was deleted and why (as exemplified in the Rules part 6A (paragraphs 245AAA to 245ZZE)). This would particularly serve sponsors who are engaging with the Rules, often in more detail than applicants. UUK would also recommend that changes to the revised Rules are not presented as archived copies or as statement of changes. Instead, any revisions should be integrated into the 'active' Rules to ensure applicants and sponsors can note these changes as appropriate and update guidance. It is also advised that any updates are reflected in the alerts posted on the Sponsorship Management System.

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::

UUK and UCEA welcome less complex Rules in order to reduce the number of mistakes made by applicants. HEIs have commented that when mistakes occur they are largely due to the misinterpretation of the Rules, whether they relate to visas, citizenship or sponsorship. Not only are the Rules complex, they are also difficult to navigate and understand and essential requirements are often hidden within them. To put it simply, applicants cannot be aware of the Rules, if the Rules they need to be aware of are not sufficiently clear or explicit.

The complexity of the Rules has also resulted in misinterpretation by Home Office officials in written and verbal correspondence through the helpline advice with applicants and sponsors and, in policy answers. There are many examples within the HE sector of misinterpretation of the Rules by case workers particularly with regard to relationship and family visas. Where the Immigration Rules do not reflect the policy intention, applicants and sponsors can equally misinterpret the Rules, which can strongly affect the outcome of each individual application. This is evidenced, again, through a recent survey where the complexity of the immigration system was found to be the most common challenge for Russell Group universities, particularly in relation to supporting Tier 2 applications. As well as leading to rejection misinterpretation often results in either delayed processing times or refusal of entry at the Border. Appendix V applicants coming through the non-sponsored route are particularly affected by the Rules being too complex simply because they are not in contact with sponsors who can support their case respectively. Potential for errors from the applicant and, the caseworker may include applying for a visitor visa that is not required, applying for the wrong type of visit visa or receiving the wrong stamp at the Border, as evidenced in the survey.

Tier 4 applicants have equally made or been subject to mistakes, as exemplified by UKICSA's submission to this consultation. As UKICSA identify, the definition of 'established presence' in Appendix C was amended five times while not added to the Rules until 2010 and removed in 2013. While the definition was set out in the policy guidance, it was not reproduced in the Immigration Rules until 2011, carrying significant implications since many students were refused leave.

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

Not Answered

Please expand on your answer::

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

Not Answered

Please expand on your answer::

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

Please share your views::

The guidance for Tier 2 and Tier 4 visa applicants and sponsors is often inconsistent, leaving room for error from applicants, sponsors and caseworkers. Although there have been some improvements to the guidance much important information is not easily available or accessible. Reading and interpreting the published guidance can be very time-consuming, particularly when the applicant is a non-English speaker and, when sponsors are conscious of changes to the Immigration Rules that may not be reflected in the guidance. As a result, HEIs are increasingly producing their own guidance to help staff and students to ensure the language is accessible and contains clear information on the application process.

While the UKVI Premium Service offers greater level of support to sponsors, HEIs have also reported inconsistency in the advice and sometimes, being contradictory; this service carries a significant cost. For sponsors and applicants dependent on the online guidance, updates to the Rules are not always reflected, neither are sponsors always made aware of the frequent changes. For example, since 2014, the Tier 2 policy guidance for the points-based system has been updated 17 times in different capacities whether as a new version or with updated documents. Evidence on staff sponsorship at HEIs indicates therefore that the level and quality of advice from UKVI is a major area for improvement. Tier 4 policy guidance does not always reflect updates of the Rules either. As UKICSA highlights, for example, since 1st October 2013, the Tier 4 guidance has been updated 25 times. There have also been occasions where guidance has not always reflected updates of the Immigration Rules. This results in sponsors distributing incomplete or occasionally incorrect advice, leading to adverse consequences. The Immigration Health Surcharge has equally increased and yet is rarely reflected in the Policy Guidance of Tier 2 or Tier 4.

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

Please share your views::

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

Please share your views::

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

Please share your views::

Consultation Question 11: We seek views on whether our example of successive changes in the detail of evidentiary requirements in paragraph 10 of Appendix FM-SE is illustrative of the way in which prescription can generate complexity.

Please share your views::

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

Please share your views::

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

Not Answered

Please expand on your answer::

UUK agrees that the discretionary elements within Appendix EU is useful in relation to the activity and evidence required of applicants. A less prescriptive approach is welcomed to ensure that activity is expressed in more general terms and provides the necessary discretion required for a caseworker to decide on the applicant's criteria for leave. The non-exhaustive list on accepted documents for EEA nationals is also welcomed. UUK recognises that the less prescriptive approach works favourably towards an Appendix EU applicant. UUK also welcomes a less prescriptive approach of Appendix V features in both substantive and evidential matters but not where discretion leads to variability between caseworkers. Appendix V applicants from both low-risk and high-risk countries would particularly benefit from a non-exhaustive list on accepted documents, similarly to Appendix EU (see EU9 (a)-(d)), to understand clearly what constitutes as a 'valid application' and, accommodates for their financial circumstances respectively. Greater clarification is also required between the Visitor Standard Visa and Permitted Paid Engagement visa and when an applicant does not require a visa.

While UUK agrees that Appendix V should feature a less prescriptive approach, 'permitted activities' within Appendix V would also benefit from being more generalised to account for the wide number of academic and professional activities carried out within HEIs, however, not where discretion leads to variability. Referencing Appendix V throughout the Rules, where appropriate, would further help a non-legal user. UUK would welcome the consideration of amendment to Part V9 on 'Grounds for cancellation or a visit visa', particularly to V.9.4 and V.9.7 to provide more specific reasons for refusal, particularly on evidential matters. Providing a non-exhaustive list for Appendix V applicants would equally support the caseworker in exercising a level of discretion and minimise variability in response.

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::

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::

UUK and UCEA welcome consideration on areas of the Rules that relate to Tier 2 sponsorship as being less prescriptive to ensure that sponsors have greater flexibility in supporting career progression of their international staff. Currently, sponsors must comply with a number of essential duties to track and monitor Tier 2 staff that have become increasingly burdensome and, in some cases, unnecessary. This also contributes to the onerous use of the sponsorship management system. Failure to comply with these duties carries high risk for sponsors which determines the rating of the sponsor and substantiates reason for audit, or in some instances, to revoke a licence. Yet these compliance duties are highly restrictive, affecting academic mobility and career progression within and between HEIs..

UUK recommends that the new Rules relating to Tier 2 sponsorship are less prescriptive to ensure that sponsors have greater flexibility in allowing workers to undertake any additional activities that support career progression such as secondment opportunities or conducting research abroad for an extended period. It is important however to find the right balance between being less prescriptive with scope for more subjectivity as this could create more uncertainty.

The Rules are also inflexible for Tier 2 workers in regard to compassionate leave, for example. UUK would welcome a less prescriptive approach to Tier 4 sponsorship as well, particularly where tracking and monitoring duties currently determine the length of short breaks that students are allowed to take during their study, or for health or family reasons. UUK further recognises that the maintenance provisions are too long, in agreement with UKICSA's answers on the consultation. Guidance needs to retain a level of detail however to avoid subjective refusals on these grounds and to support advisers.

Consultation Question 18

Not Answered

Please expand on your answer::

Consultation Question 19: We seek views on whether consultees see any difficulties with the form of words used in the New Zealand operation manual that a requirement should be demonstrated "to the satisfaction of the decision-maker"?

Please share your views::

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::

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

Not Answered

Please expand on your answer::

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

Not Answered

Please expand on your answer::

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

Please share your views::

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

Please share your views::

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

Not Answered

Please expand on your answer::

Consultation Question 26:

Not Answered

Please expand on your answer::

Consultation Question 27:

Not Answered

Please expand on your answer::

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

Please share your views: :

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

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?

Not Answered

Please expand on your answer: :

Consultation Question 31:

Not Answered

Please expand on your answer::

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

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?

Not Answered

Please expand on your answer::

Consultation Question 37:

Not Answered

Please expand on your answer::

Consultation Question 38:

Not Answered

Please expand on your answer::

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

Please share your views::

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

Not Answered

Please expand on your answer::

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

Not Answered

Please expand on your answer::

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

Please share your views: :

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

Please share your views::

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

Please share your views: :

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

Please share your views::

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

Please share your views::

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

Not Answered

Please expand on your answer::

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

Not Answered

Please expand on your answer::

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

Please share your views::

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

Not Answered

Please expand on your answer::

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

Not Answered

Please expand on your answer::

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

Please share your views::

Consultation Question 53: In what ways is the online application process and in-person appointment system as developed to date an improvement on a paper application system? Are there any areas where it is problematic?

Please share your views::

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

Not Answered

Please expand on your answer::

Additional comments

Additional comments

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

UCEA runs an immigration network for HEI members with a mailbase and regular network meetings. The complexity of the Rules and their application and interpretation is a regular discussion topic. HEIs are large employers and significant users of Tier 2; yet they still struggle with the Rules.