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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:

Louise Saunderson

What is the name of your organisation?

Enter the name of your organisation:

University of York

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

Other (please state)

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Response on behalf of the University of York Immigration Advice Team

What is your email address?

Email:

[REDACTED]

What is your telephone number?

Telephone number:

[REDACTED]

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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?

Yes

Please expand on your answer::

The Immigration Rules are confusing to read and difficult to understand. Finding the relevant section is always a challenge.

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::

We advise students, many of whom speak English as a second language and have no prior knowledge of UK immigration regulations. The Immigration Rules as they stand do not enable such users (or their advisers) to understand the rules, or to challenge the UKVI where the rules have been applied incorrectly.

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 Rules do not affect applicant error because we provide clear guidance on our website, by email and face to face. If there is doubt about a regulation we are fortunate to be able to check with our UKVI Premium Customer Service team on behalf of our students. However, this Team is only available to us because the University pays the UKVI a yearly subscription of £8000 .

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?

Yes

Please expand on your answer::

We mostly use the Tier 4 Policy Guidance, Sponsor Guidance or consult with the UKVI Premium Customer Service team, so this doesn't affect us.

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

Please share your views::

The Tier 4 Policy Guidance and accompanying Sponsorship Guidance is mostly useful and far more clear than the Rules. However, there are often sections which are not updated, or which do not give enough information for a regulation to be interpreted correctly. The Guidance is often updated at very short notice for Rule changes which have serious and highly inconvenient consequences for our students. The best (or worst) example of this was the change in Academic Progression rules. As advisers, we couldn't understand which cohorts it affected because it was so unclear. The UKVI were clueless also - many of the staff members there have not been through Higher Education so have no understanding of the differences between a BEng and MEng for instance. Finally, we had to identify and email individual students who were affected due to course transfers, with no UKVI support, almost a month after the Rules had changed to advise them that they must now return to their home country at considerable expense and inconvenience to get new Tier 4 visas, when they had expected to simply renew in the UK.

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::

The Tier 4 application for extending in the UK could be easier to access as you have to first select 'extend your visa' from a list of options on the General Student Visa (Tier 4) page on Gov.UK. Not all students understand what 'extend' means in relation to renewing a Tier 4 visa. They then scroll and select 'Apply online' and scroll again to select 'Apply now'. These last two options are easy to miss because they are on pages which contain a lot of information. It's also not clear why the Gov.UK page isn't called Tier 4 (General) student visa, which is surely more accurate. However, once in the application it is mostly very straightforward with useful explanations by each question. My only issue is that despite all the improvements that have been made, it still does not distinguish between a financial sponsor and the educational institution which is bizarrely also referred to as a sponsor. For applying outside the UK, again there have been huge improvements but there are still problems with students being unable to use the new form and having to revert to the old Visas4UK form which is not so clear and is more confusing to complete.

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::

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 prescriptive approach is better for clarity in my view. I advised students before Tier 4, and although there was far less guidance to worry about, I often encountered students who had been treated differently to friends and peers despite submitting almost identical evidence. If UKVI caseworkers were more plentiful, better trained and more highly paid the less prescriptive approach might work, but I'm not convinced that it would at present.

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

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::

I don't believe that this wording would inspire confidence in applicants that the decision-making process was impartial or robust.

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?

Yes

Please expand on your answer::

Users of the Immigration Rules would benefit massively if they were made more concise. At present I avoid using them because they take too long to consult and understand. It is far easier to email or phone the UKVI Premium Customer Service Team, even though they don't appear to understand the rules either!.

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?

Yes

Please expand on your answer::

A good contents table would be invaluable in identifying the correct section required, and should stop the need for any kind of overview which would be adding even more text.

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: :

Tables of contents.

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: :

This would be useful so that a variety of different users could assess whether the Rules work better for their requirements.

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?

No

Please expand on your answer::

Dates of commencement would definitely be a helpful improvement. However, given how often the UKVI must amend their amendments, I suspect an accessible archiving system would also be necessary as back up.

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::

Tier 4 students have often entered the UK under visa conditions which change during their period of leave. This can have a significant impact. For example, many students chose the UK as a study destination because of the attractive prospect of the Post-study Work visa. When this was suddenly abolished, with no transition period, students felt they had been misled. More recently, the Immigration Health Surcharge, has been doubled at short notice. While I appreciate that this is not part of the Immigration Rules, it still affects those on visas. Again, because there was no transition period for those already in the UK, students who applied on 7 January paid half the cost to those applying on 8 January, and we were left with little time to warn them because of the Christmas holiday. The UKVI needs to appreciate that visa holders are real people, not merely numbers. The Home Office, despite its new motto of 'World Class Customer Service' still thinks of all migrants as a burden to the system, instead of skilled people who bring huge economic benefits to the UK.

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::

At present, the understaffed UKVI is unable to keep up with 4 changes per year, let alone our own university advisers. Two changes maximum would be far more manageable. Given that many users of the Rules are educational institutions, the October changes are highly inconvenient and should ideally be put back to December. Often students applying in September receive different information to those applying just a couple of weeks later due to Rule changes.

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::

The online application is a big improvement on the paper application. However, the UKVCAS system for having documents scanned is dismal. Appointments are incredibly expensive unless an applicant is able to travel to a 'core centre' (assuming an appointment is available there) and this still involves paying for travel. There aren't enough appointments available, so the surge period in September and October is a concern, and applicants paying extra for premium services are usually getting their visas processed more slowly than those paying for the cheapest standard service because of lack of suitable appointments. Although being able to retain the passport is good in principle, I fully expect some of our students to attempt to travel out of the CTA while their visa is being processed and have their applications withdrawn, as this is a difficult concept to communicate.

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::