Law Commission
Reforming the law

Simplification of the Immigration Rules

Consultation paper

Consultation Paper 242

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Simplification of the Immigration Rules

21 January 2019

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THE LAW COMMISSION – HOW WE CONSULT

About the Law Commission: The Law Commission was set up by section 1 of the Law Commissions Act 1965 for the purpose of promoting the reform of the law. The Law Commissioners are: The Hon Lord Justice Green, *Chair*, Professor Nick Hopkins, Stephen Lewis, Professor David Ormerod QC and Nicholas Paines QC. The Chief Executive is Phillip Golding.

Topic of this consultation: This consultation paper reviews the Immigration Rules in order to identify the underlying causes of their complexity, and to identify principles under which they can be redrafted to make them simpler and more accessible.

It makes a number of preliminary proposals to pave the way for the introduction and maintenance of clear, comprehensible and logically organised Rules, and asks whether consultees agree. It also seeks the views of consultees on more open questions.

The paper also includes specimen redrafting of some of the Rules.

The review does not consider substantive immigration policy.

Geographical scope: The consultation paper applies to the law of England and Wales.

Availability of materials: The consultation paper is available on our website at https://www.lawcom.gov.uk/project/simplifying-the-immigration-rules/. We are committed to providing accessible publications. If you require this consultation paper to be made available in a different format please email immigration@lawcommission.gov.uk or call 020 3334 0200.

Comments may be sent:

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By email to **immigration@lawcommission.gov.uk**

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By post to **Immigration Team, Law Commission, 1st Floor, Tower, 52 Queen Anne's Gate, London, SW1H 9AG.**

Tel: 020 3334 0200.

If you send your comments by post, it would be helpful if, whenever possible, you could also send them by email.

Duration of the consultation: We invite responses from 21 January to 26 April 2019.

After the consultation: In light of the responses we receive, we will prepare our final recommendations and present them to Government.

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Contents

Chapter 1: Introduction

1.1 The statutory basis for the modern system of immigration control is principally in the Immigration Act 1971 ("the 1971 Act"), which came into force on 1 January 1973.

1.2 The 1971 Act contains very little detail about the requirements for entry and stay in the United Kingdom. Instead, it provides for rules to be laid down and amended by the Secretary of State as to the practice to be followed for regulating the entry and stay of persons not having the right of abode.[1] These are known as the Immigration Rules ("the Rules").

1.3 Lord Hope in *R (Alvi) v Secretary of State for the Home Department* described the evolution of the Rules in the following terms:

> The system which the Secretary of State operates today in the administration of the 1971 Act is far removed from that which was contemplated at the time when the Bill that became that Act was being discussed in Parliament. The first versions of the rules were 17 and 20 pages long. The 1994 Statement of Changes in Immigration Rules (HC 395) extended to 80 pages. There have been over 90 statements of change since then, and HC 395 has become increasingly complex. The current consolidated version which is available on line from the UKBA website extends to 488 pages. Extensive use is now made of the internet, a system for the dissemination of information to the public that was, of course, unknown 40 years ago. 19 statements of changes in the Immigration Rules have been published on the website since February 2010. There have been four this year, the last of which was in June 2012. The ease with which information on a website can be removed, added to or amended encourages resort to these techniques to a degree that would have been wholly impracticable in the days of the mechanical typewriter. In *DP (United States of America) v Secretary of State for the Home Department* … Lord Justice Longmore lamented, with good reason, the absolute whirlwind which litigants and judges now feel themselves in due to the speed with which the law, practice and policy change in this field of law.[2]

1.4 The *Alvi* decision was handed down in 2012. Since this time the Rules have grown further in volume and complexity. As of 31 December 2018, they numbered 1133 pages. They have approximately quadrupled in length in the last ten years.[3] Statements of changes to the Rules continue to be frequent and detailed. The Rules are widely criticised for being poorly drafted. The numbering system is inconsistent; as well as the familiar hybrid paragraph numbering due to insertion of new paragraphs (adding "As" and "ABs" and the like), several Appendices have been introduced which have their own different numbering system.

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1 See Immigration Act 1971, ss 1(4) and 3(2).

2 *R (Alvi) v Secretary of State for the Home Department* [2012] UKSC 33, [2012] 1 WLR 2208 at [11].

3 See chapter 5.

1.5 The drafting of the Rules has been criticised by senior judges. Lord Justice Jackson described them as having "now achieved a degree of complexity which even the Byzantine Emperors would have envied".[4] In another case, Lord Justice Underhill found the rule the court was concerned with to be "not alas untypical of the kind of rebarbative drafting which those trying to understand the Rules have to grapple with", and urged the Secretary of State to consider making the Rules accessible:

> I fully recognise that the Immigration Rules, which have to deal with a wide variety of circumstances and may have as regards some issues to make very detailed provision, will never be "easy, plain and short" (to use the language of the law reformers of the Commonwealth period); and it is no doubt unrealistic to hope that every provision will be understandable by lay-people, let alone would-be immigrants. But the aim should be that the Rules should be readily understandable by ordinary lawyers and other advisers. That is not the case at present.[5]

1.6 In addition to the Rules, the Home Office produces a wide array of material guiding, supplementing or supporting the Rules. Lord Justice Underhill has commented that "the web of Rules and guidance has become so tangled that even the spider has difficulty controlling it".[6]

THIS PROJECT

1.7 The Law Society, the Bar Council and the Immigration Law Practitioners' Association made submissions relating to immigration and asylum law in our consultation on our 13th programme of law reform. The submissions suggested two strands of work to be investigated: consolidation of statute and simplification of the Rules. Following discussions with the Home Office, the remit of the project was determined to be the simplification of the Rules. The project forms part of our 13th programme of law reform.

1.8 The terms of reference for the project as agreed between the Home Office and the Law Commission are as follows.

(1) To review the Immigration Rules to identify principles under which they could be redrafted to make them simpler and more accessible to the user, and for that clarity to be maintained in the years to come.

(2) The project might include consideration of the structure and drafting of the Rules, the timing and frequency of amendments to the Rules, the division of material between Rules and guidance and the way in which the Rules are published. The Commission will seek to identify the underlying causes of complexity in the Rules and make recommendations to improve them for the future.

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4 *Pokhriyal v Secretary of State for the Home Department* [2013] EWCA Civ 1568, [2014] INLR 291 at [4].

5 *Singh v Secretary of State for the Home Department* [2015] EWCA Civ 74, [2015] WLR(D) 66 at [59].

6 *Mudiyanselage v Secretary of State for the Home Department* [2018] EWCA Civ 65, [2018] 4 WLR 55 at [54].

(3) The project will include a public consultation. It will conclude with a report setting out the Commission's recommendations, and including a redraft of some of the Rules, putting some of those recommendations into effect.

(4) The review will not consider substantive immigration policy.

1.9 The remit of this project thus concerns the Rules, including their relationship with guidance and the way they are published. Our review does not consider substantive immigration policy or changes to the underpinning statutory scheme.

1.10 Determining which applicants are granted leave to enter or remain in the UK is self-evidently a matter of substantive immigration policy. Whether those decisions are to be taken in accordance with highly prescriptive rules (as is largely the case at present) or on a more discretionary basis as formerly, is also a matter of policy, but at the same time bears on the drafting style. We discuss it tentatively in this paper.

1.11 Ongoing meetings have taken place since the start of the project with the Home Office, as the sponsoring department for this project. We are grateful for the input and expertise that officials have been able to provide.

1.12 The importance of engagement with stakeholders was identified at the start of the project. We have benefitted from a range of pre-consultation meetings with key stakeholders and other experts. These have included meetings with the Immigration Law Practitioners' Association, the Law Society's Immigration Committee, caseworkers and other staff at the Home Office's offices in Sheffield and Liverpool, Home Office policy and legal officers, and the National Archives.[7]

1.13 The project officially started on 13 December 2017 with the launch of the Commission's 13th programme of law reform. The publication of this consultation paper will be followed by a period of public consultation ending in April 2019. The results of the consultation will be analysed and a final report published incorporating our analysis.

1.14 In this paper we seek the views of consultees first on the pros and cons of reducing prescription in the Rules, or in some parts of the Rules, by reverting to a structure of more general rules supported by non-exhaustive or illustrative guidance which is not mandatory. Next, we seek views on the creation of a more user-friendly product through the reorganisation of the structure of the Rules. We then consider possible improvements to the internal organisation of the Parts of the Rules, and provisionally propose a new approach to drafting style, on which we seek views. We also present an illustrative re-draft of two portions of the Rules and seek comments on them.

1.15 We also seek views on possible ways of maintaining simplicity once achieved, and approaches to the archiving of previous versions of the Rules. We conclude with consideration of the experience of applicants in accessing the Rules and a review of the technological advances which are already changing how the Rules are accessed. We seek views on how these could be harnessed to provide a clearer route map for applicants and to help them to navigate the appropriate eligibility requirements.

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7 The National Archives, among other things, maintains the legislation.gov.uk website.

WITHDRAWAL FROM THE EUROPEAN UNION

1.16 The UK's prospective withdrawal from the EU makes this a unique time in the development of the immigration system. Currently the Rules mainly apply to non-European migrants. The position of those with rights of free movement under the law of the EU or the European Economic Area, together with Swiss nationals, is currently governed by the Immigration (European Economic Area) Regulations 2016.[8] Withdrawal will mean that the Rules will need to be extended and/or redrafted to apply to those nationals and will bring a substantial number of further cases within their scope.[9]

1.17 Since the project began, Appendix EU has been added to the Rules to deal with the position of those who have exercised rights of free movement. We refer to it from time to time in this paper. It does not seem to us that withdrawal from the EU raises any specific drafting issues, though the prospect of it heightens the urgency of creating better drafted Rules.

COMPLEXITY IN LEGAL TEXTS

1.18 In 2012 the Office of the Parliamentary Counsel conducted a review of the causes of complex legislation. This was undertaken in the context of the Good Law initiative which promotes clear, accessible, effective, coherent and necessary legislation. The review identified three aspects of users' experience of legislation:

(1) volume;

(2) quality; and

(3) the perception of disproportionate complexity.[10]

Quality

1.19 The review saw the quality of legislation as being in part determined by how clear and simple the legislative text is. Others have identified three frequently recognised tools which drafters can use to enhance the quality of legislation: clarity; precision; and unambiguity. Clarity relates to how easily the law is understood by its readers.

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8 SI 2016 No 1052. See para 2.25 below.

9 It is likely that section 7(1) of the Immigration Act 1988, which provides that those exercising EU rights (who include nationals of EEA states and Switzerland) are not subject to UK immigration control, will be repealed and immigration provisions for EU citizens aligned with those applying to other foreign nationals. It has been estimated that more than 3 million EU citizens' cases will need to be processed. Appendix EU came into force on 28 August 2018. EU citizens and their families currently present in the UK who have been resident for five years by 31 December 2020 will be able to apply for "settled" status. EU citizens and their families who are resident by 31 December 2020 but have not been continuously resident for five years will be able to apply for "pre-settled" status. The scheme was initially rolled out to particular groups over late 2018 and will be fully operative by March 2019.

10 Office of the Parliamentary Counsel, *When Laws Become Too Complex: A review into the causes of complex legislation* (2013) 6.

Precision ensures that the legislature's intent is expressed with accuracy. Ambiguity deals with how certain the meaning of the chosen word is.[11]

1.20 There is a tension between clarity and precision, and a debate as to which concept should prevail. Over-precision can make legislation harder to understand, which in turn lowers its overall clarity. On the other hand, favouring readability over precision jeopardises the accurate communication of the legislature's intention.[12] This suggests that a healthy balance must be struck between the two:

> The obligation to be intelligible, to convey the intended meaning so that it is comprehensible and easily understood by the affected parties, is best satisfied by writing with simplicity and precision… A law which is drafted in precise but not simple terms may, on account of its incomprehensibility, fail to achieve the result intended. The blind pursuit of precision will inevitably lead to complexity...[13]

Perception of complexity

1.21 The perception of disproportionate complexity was found to stem from a lack of public confidence in reading and engaging with legislation. The Office of the Parliamentary Counsel has suggested that this could be overcome by providing access to legislation in an efficient and user-friendly way, combined with the availability of guidance explaining how compliance can be ensured in the individual's specific circumstances.[14]

CAUSES OF LENGTH AND COMPLEXITY IN THE CURRENT IMMIGRATION RULES

1.22 In our provisional view, a number of factors have contributed both to the length and to the complexity of the current Rules. We discuss them in later chapters of this paper. In doing so we have found it important to bear in mind that length and complexity are not synonymous. As the Office of the Parliamentary Counsel has pointed out, length in itself does not necessarily involve greater complexity.[15] Where the Rules are accessed online, their total overall length may not even be evident. Secondly, neither length nor complexity is an absolute evil. Each of them may be unavoidable. Criteria for eligibility for immigration leave have to deal with a wide variety of situations, and must be appropriate to each. This inevitably gives rise to a complex scheme encapsulated in a substantial book of rules.

1.23 On the other hand, rules that are unnecessarily long or complex are intrinsically inefficient and unnecessarily burdensome and off-putting for the user. In this consultation paper we therefore seek to identify the contributory factors to length and

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11 H Xanthaki, *Drafting legislation: Art and technology of rules for regulation* (2014) pp 88-91.

12 Reed Dickerson, "The Diseases of Legislative Language" (1964) 1 *Harvard Journal on Legislation* 11.

13 GC Thornton, *Legislative Drafting* (1987) 49 as cited in H Xanthaki, *Drafting legislation: Art and technology of rules for regulation* (2014) p 128.

14 Office of the Parliamentary Counsel, *When Laws Become Too Complex: A review into the causes of complex legislation* (2013) 18.

15 Office of the Parliamentary Counsel, *When Laws Become Too Complex: A review into the causes of complex legislation* (2013) 18.

to complexity in the current Rules as a prelude to seeking consultees' views on whether the length or complexity that they produce is avoidable.

1.24 One of the causes of complexity has been the introduction of a points-based system accompanied by a much more prescriptive set of Rules governing entitlement to enter or stay in the UK. This presents advantages in terms of transparency and certainty but inevitably leads to a longer rule book. Another is the requirement of the 1971 Act, as interpreted in *Alvi*, that anything laid down by the Secretary of State that amounts to a requirement which a migrant must satisfy as a condition of being given leave must be contained in the Rules in order to be enforceable. This has led to a significant amount of material previously contained in guidance being transferred into the Rules. A further contributing factor has been the policy objective of incorporating the requirements of Article 8 of the European Convention of Human Rights (the right to family and private life) within the Rules.[16]

1.25 Other drivers of length and complexity are matters of structure, internal organisation and drafting style. Drafting approaches which produce duplication between categories and repetition or near-repetition within categories can be confusing. Inconsistent numbering systems are difficult to follow. Extensive cross-referencing requires users to navigate a labyrinth of provisions.

1.26 Multiple sources of immigration law can also lead to complexity. For example, the large body of immigration guidance[17] (discussed in more detail at chapter 4) may contain provisions more favourable to an applicant than provisions within the Rules. Discrepancies between the Rules and guidance have sometimes led to confusion.[18]

PRINCIPLES UNDERPINNING THE SIMPLIFICATION PROJECT

1.27 From this discussion, we preliminarily propose that the following principles underpin the redrafting of the Rules:

(1) suitability for the target audience;

(2) comprehensiveness;

(3) accuracy;

(4) accessibility;

(5) consistency;

(6) durability (making the rules apt for amendments); and

(7) capacity for presentation in a digital form.

1.28 In 2018 we published our report on a new Code of criminal sentencing procedure, accompanied by a draft Bill. The Code seeks to adopt these principles. It includes, for

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16 These developments are described in more detail in chapters 2, 3, and 5.

17 For example, the Immigration Directorate Instructions and Modernised Guidance.

18 See, for example, *SF and others (Guidance, post–2014 Act) Albania* [2017] UKUT 00120 (IAC).

example, signposts to other provisions of legislation and has been drafted with a view to use in a digital form. [19]

IS THERE A "TARGET AUDIENCE" FOR THE IMMIGRATION RULES?

1.29 The Good Law approach would suggest that impact on the target audience is an important principle which should underpin the presentation and drafting of Rules.

1.30 Some argue that the primary audience should be identified in order to ensure that legislation is comprehensible to them and fulfils their particular requirements.[20] Richard Heaton has said it is widely accepted:

> that legislation must speak to the probable reader, not to someone who likes to solve fiendishly clever word-games…[21]

1.31 In the past, most users of legislation were legally qualified, but the range of users has increased with internet access. Legislation.gov.uk has around 2 million different visitors each month and provides more than 400 million page impressions of legislation each year.[22] In our view, the likely users of the Rules include:

(1) applicants for immigration leave;

(2) legal and immigration advisers;

(3) Home Office caseworkers;

(4) the judiciary; and

(5) Members of Parliament.

1.32 Some of these groups use the Rules for different purposes and might therefore require different qualities from them. Non-lawyer users are concerned with the simplicity and accessibility of legislation. They want provisions that are easy to understand and not overly burdensome.[23] Parliamentarians can be expected to be concerned with the policy behind the Rules; for this, they need to understand what their effect will be. Case workers and advisers are required to navigate around and apply them to a particular case.

1.33 We have not found any statistics on users of the Rules. Home Office statistics indicate that there were over 3 million applications for entry clearance in the year ending June

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19 See the Sentencing Code (2018) Law Com No 382.

20 See Alison Bertlin, "What works best for the reader? A study on drafting and presenting legislation" (2014) *Commonwealth Association of Legislative Counsel* 27-28.

21 *Speech on Innovation and Continuity in law-making*, https://www.gov.uk/government/speeches/innovation-and-continuity-in-law-making (last visited 10 January 2019).

22 Alison Bertlin, "What works best for the reader? A study on drafting and presenting legislation" (2014) *Commonwealth Association of Legislative Counsel* 27.

23 Office of the Parliamentary Counsel, *When Laws Become Too Complex: A review into the causes of complex legislation* (2013) 21.

2018.[24] Although the statistics do not indicate what proportion of these applications were made by unrepresented applicants, we consider it unlikely, due to cost and accessibility from abroad, that more than a fraction of them were made with professional assistance.[25]

1.34 We provisionally consider it desirable that, just as with legislation generally, the Rules should be accessible to those who are affected by them. We agree with Alison Bertlin that:

> Whether, and how easily, legislation can be understood is important. Legislation must not only give effect to the policy but also communicate it. If it fails to do that, it is not effective. If people cannot understand what legislation requires them to do, that is quite simply not fair. If they fail to do what is required because they do not understand what that is, the legislation is not having the desired effect. And if they just ignore it because it is too difficult to understand, that starts to undermine the rule of law.[26]

1.35 Even if the Rules are written primarily for a non-expert audience, the drafting style adopted will not necessarily differ from the most suitable style for legally trained professionals. It has been suggested that:

> … the question whether drafters should focus on a primary audience of trained lawyers may be hollow … It is possible that legislation written principally to meet the requirements of even the most highly skilled judges and lawyers may not in fact be different from legislation written to be as clear as possible for a wider audience …[27]

BENEFITS OF SIMPLIFICATION

1.36 This project presents a unique opportunity to address some of the complexity and difficulties associated with the Rules by reviewing the nature and causes of their complexity and making recommendations for reform. The provisional proposals contained in this consultation paper are intended to pave the way for the introduction of Rules that are simpler and underpinned by the principles we identify, and for that clarity to be maintained in the years to come.

1.37 Our proposals are made with the digital presentation of the Rules in mind. They are intended to be made alongside provision for technological changes. These changes offer the prospect of significant improvements to the users' experience of the Rules. Online application forms are likely to become the norm. They are already mandatory for some routes of application.

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24 *Home Office, National Statistics: Summary of latest statistics* (2018), https://www.gov.uk/government/statistics/immigration-statistics-year-ending-june-2018 (last visited 3 December 2018). 2.8 million visas were granted in this period. In-country, there were 235,152 grants of extensions of temporary stay, and 81,359 grants of settlement.

25 Good drafting also makes the translation of the Rules easier where users are not English speakers.

26 Alison Bertlin, "What works best for the reader? A study on drafting and presenting legislation" (2014) *Commonwealth Association of Legislative Counsel* 28.

27 Alison Bertlin, "What works best for the reader? A study on drafting and presenting legislation" (2014) *Commonwealth Association of Legislative Counsel* 48.

1.38 There will also be a need to meet the challenges presented by withdrawal from the EU.

1.39 We believe that there needs to be a radical approach to simplifying the Rules. It is essential to have Rules that provide the basis for an effective and modern system of immigration in which users can have confidence.

1.40 The Home Office has signalled its intention to 'give a human face' to the immigration system[28] after it emerged that many members of the 'Windrush' generation of Commonwealth citizens who had lived in the UK before 1 January 1973 had been left unable to prove their immigration status. As a result, they had been adversely affected by the measures aimed at combatting illegal migration widely termed in the media as the 'hostile environment'.[29] The recent National Audit Office report, "Handling of the Windrush situation', suggests that the complexity of the immigration system contributed to the problem. In many cases individuals were left confused about their immigration status and rights, and in some cases made the wrong type of application. The report recommends simplifying forms and guidance as part of a Department-wide strategy to support potentially vulnerable customers.[30]

1.41 The benefits which could flow from simpler Rules include increased transparency for applicants, increased legal certainty, and better and speedier decision-making by the Home Office caseworkers. This leads to a potential reduction in administrative reviews, appeals and judicial reviews, and the creation of a system which is easier to keep up to date. All these improvements create savings in time and costs.

1.42 The draft impact assessment which accompanies this consultation paper estimates the potential costs savings provided by simplification.

Consultation Question 1.

1.43 Do consultees agree that there is a need for an overhaul of the Immigration Rules?

Consultation Question 2.

1.44 Do consultees agree with the principles we have identified to underpin the drafting of the Immigration Rules?

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28 Home Secretary statement to the House of Commons on the Windrush generation (23 April 2018): https://www.gov.uk/government/speeches/home-secretary-statement-on-the-windrush-generation (last visited 21 December 2018).

29 The Home Office now uses the term 'compliant environment'.

30 Report on the Handling of the Windrush situation (2017-2019) HC 1622 https://www.nao.org.uk/wp-content/uploads/2018/12/Handling-of-the-Windrush-situation-1.pdf (last visited 24 December 2018). See in particular pp 8, 13, 31 and 40.

Consultation Question 3.

1.45 We provisionally consider that the Immigration Rules should be drafted so as to be accessible to a non-expert user.

Do consultees agree?

Consultation Question 4.

1.46 To what extent do consultees think that complexity in the Immigration Rules increases the number of mistakes made by applicants?

Consultation Question 5.

1.47 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?

OVERVIEW OF THIS CONSULTATION PAPER

1.48 This consultation paper begins by setting out, in **chapter 2**, a survey of the place of the Rules within the system of immigration control in the UK. **Chapter 3** discusses the legal status and character of the Rules. In particular, it looks at what the 1971 Act says about what they must contain. **Chapter 4** discusses the role of instructions to immigration decision-makers, guidance both for decision-makers and applicants, and prescribed forms. The way in which law and policy changes have acted as drivers of complexity in the Rules is analysed in **chapter 5**.

1.49 Our detailed examination of how the presentation of the Rules might be improved commences at **chapter 6**, which considers whether the Rules, or parts of the Rules, could be shorter, less prescriptive and supplemented by non-exhaustive guidance. **Chapter 7** discusses the way the Rules are currently organised. **Chapter 8** makes provisional proposals as to how the Rules could be re-structured. **Chapter 9** considers reform of the way in which each part of the Rules is organised internally, and **chapter 10** looks at drafting style and canvasses the adoption of style guidance to maintain clear drafting in the future. **Chapter 11** discusses two pieces of specimen redrafting that we have attempted – of the current Part 9 of the Rules, containing general grounds for refusal of immigration leave, and of a portion of Appendix FM to the Rules dealing with immigration applications by partners of people already here.

1.50 We turn finally to three other matters. **Chapter 12** considers how to maintain a simplified structure and content. **Chapter 13** discusses how changes in the Rules

should be presented and how old versions of the Rules should be kept available. **Chapter 14** considers ways in which technological developments might be used to simplify access to the Rules**.** The consultation questions that we ask in the course of the paper are gathered together in **chapter 15.**

PROJECT TEAM

1.51 The following members of the Public Law team have contributed to this consultation paper: Henni Ouahes (team manager); Tim Spencer-Lane (team lawyer); Jonathan Kingham (team lawyer and solicitor at North Star Law); Lisa Smith (team lawyer); Robin Pickard (research assistant); Stephanie Theophanidou (research assistant).

Chapter 2: A survey of the system of immigration control

2.1 United Kingdom immigration law is comprised of a mass of primary and secondary legislation, lengthy Immigration Rules, and numerous and voluminous policy instructions and guidance documents. Many of these have been interpreted and developed by a substantial body of judicial rulings.

2.2 The UK's immigration law is also intrinsically linked to international instruments. These include:

(1) the European Convention on the Protection of Human Rights and Fundamental Freedoms 1950;

(2) the United Nations Convention relating to the Status of Refugees 1951;

(3) the United Nations Protocol relating to the Status of Refugees 1967; and

(4) the United Nations Convention on the Rights of the Child 1989.

2.3 There is also a substantial body of European Union and European Economic Area law governing the movement of EEA and Swiss nationals and their families[31] and some aspects of the treatment of migrants of other nationalities.[32] In addition, there are decisions of the European Court of Human Rights and the Court of Justice of the European Union which impact on domestic law.

2.4 In the chapter we provide a brief outline of the history of immigration control in the UK, and describe the current system. We explain the place of the Rules within the system, and give an overview of the structure of the Rules and the principal categories of applicant they cover.

HISTORICAL BACKGROUND

2.5 In the early days of modern immigration law, the Aliens Act 1905 created a statutory power to refuse leave to enter to "undesirable immigrants". It also restricted

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31 See para 2.25 below.

32 The UK is currently bound by the Reception Conditions Directive 2003/9/EC, Official Journal L 31 of 6.2.2003; Qualification Directive 2004/83/EC, Official Journal L 304 of 30.9.2004; Asylum Procedures Directive 2005/85/EC, Official Journal L 326 of 13.12.2005; Dublin III Regulation (EU) No 604/2013, Official Journal L 180 of 29.6.2013. The UK has not opted into the second phase of the Common European Asylum System, https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2016-12-16/HCWS374/ (last visited 18 April 2018).

immigration to authorised ports.[33] Although not the first piece of legislation controlling "aliens", it was the first to establish a system of immigration control upon entry.[34]

2.6 In 1914, the powers created by the Aliens Act 1905 were extended. Aliens were defined under the British Nationality and Status of Aliens Act 1914 as those who were not British subjects and those who did not owe allegiance to the Crown.[35] The Aliens Restriction Act 1914 gave the Secretary of State considerable powers to control immigration through Orders in Council. These powers included:

(1) prohibiting aliens from landing in the UK;

(2) deporting aliens; and

(3) requiring aliens residing in the UK to be registered and to comply with travelling and other restrictions.[36]

2.7 The Aliens Restriction (Amendment) Act 1919 extended the above wartime powers and by 1920 aliens were subjected to a more expansive control system, which included the need to obtain work permits.[37]

2.8 With various amendments, this system continued until it was replaced by the Aliens Order 1953.[38]

2.9 The model of controlling entry into the UK was reproduced and extended in the Commonwealth Immigrants Acts 1962 and 1968. For the first time, the Commonwealth Immigrants Act 1962 made Commonwealth citizens subject to immigration control in the UK.[39] Immigration control applied to all Commonwealth citizens except for the following:

(1) those born in the UK;

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33 Aliens Act 1905, s 1(1) and s 1(3). Undesirable immigrants included those (apart from fugitives) who were unable to support themselves or their dependants, those convicted abroad of an extraditable offence, and those who were the subject of an expulsion order made under a new power in the Act.

34 See Dallal Stevens, "UK Asylum Law and Policy - Historical and Contemporary Perspectives" (2004) *United Kingdom Asylum Law and Policy* 19 to 32 for discussion of earlier legislation relating to aliens. This provided general powers of exclusion and expulsion but did not seek to establish an administrative structure of entry control. According to I A Macdonald and R Toal, *Macdonald's Immigration Law & Practice* (9th ed 2014) para 1.5, prior to the enactment of the 1905 Act, friendly aliens were free to come to Britain and could not be removed or deported by executive action; every removal or exclusion of aliens in the previous 200 years had been authorised by Parliament.

35 British Nationality and Status of Aliens Act 1914, s 27(1).

36 Aliens Restriction Act 1914, s 1.

37 Aliens Order 1920, SR & O 1920 No 448. See also G Clayton, *Immigration and Asylum Law* (7th ed 2016) p 7.

38 SI 1953 No 1671. See also Ian Macdonald, "Rights of settlement and the prerogative in the UK - a historical perspective" (2013) *Journal of Immigration Asylum and Nationality Law* 13 to 14.

39 The British Nationality Act 1948 had introduced the status of "Citizen of the United Kingdom and Colonies", which could be acquired by birth in, or descent from a father who was a citizen of, the UK and various countries listed in section 1(3) of the Act. A citizen of the UK and Colonies could be known as a "British subject" or a "Commonwealth Citizen"; the terms had the same meaning in law.

(2) holders of UK passports issued by the UK government (as opposed to those issued on behalf of the government of a Crown colony or of some other part of the Commonwealth); and

(3) other persons included in the passport of a person excluded from immigration control under (1) or (2) above.[40]

2.10 The Commonwealth Immigrants Act 1968 further divided holders of UK passports into two separate categories: those who could enter the UK without restriction, and those who could not.

2.11 In 1969 the Immigration Appeals Act conferred rights of appeal on Commonwealth citizens and made provision for rights of appeal to be conferred on aliens. At the same time, it gave statutory recognition to the concept of the Rules. The Act introduced rights of appeal where a decision was "not in accordance with the law or with any Immigration Rules applicable to the case".[41] Section 24(2) defined "Immigration Rules" as Rules made by the Secretary of State for the administration of the control of entry into the UK of persons to whom the Act applied and the control of such persons after entry. It went on to require that the Rules must be "published and laid before Parliament".

THE IMMIGRATION ACT 1971

2.12 The Immigration Act 1971 came into force on 1 January 1973. It has been referred to as a "constitutional landmark".[42] The 1971 Act introduced more extensive provision than previous immigration legislation and notably introduced:

(1) the right of abode[43] for those it defined as "patrials", which at that time included:

(a) a citizen of the UK and Colonies who was born, adopted, naturalised or registered in the UK, Channel Islands or Isle of Man;[44]

(b) a citizen of the UK and Colonies who was previously ordinarily resident in the UK for any continuous period of 5 years; and

(c) a Commonwealth citizen who was, or had been, married to a man with the right of abode;

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40 Commonwealth Immigrants Act 1962, s 2.

41 Immigration Appeals Act 1969, s 8. See also *Secretary of State for the Home Department v Pankina* [2010] EWCA Civ 719, [2010] 3 WLR 1526 at [9] by Sedley LJ. It appears that the practice of drawing up Immigration Rules had existed for some time: see *R (Munir) v Secretary of State for the Home Department* [2012] UKSC 32, [2012] I WLR 2192 at [39].

42 *R (Alvi) v Secretary of State for the Home Department* [2012] UKSC 33, [2012] 1 WLR 2208 at [29] to [31] by Lord Hope. See also *Hansard* (HL), 16 June 1971, vol 819, col 493.

43 Immigration Act 1971, s 2 as originally enacted.

44 British Nationality Act 1948, ss 6 to 8 (now repealed) entitled a Commonwealth citizen to be registered in one of these territories after one year's ordinary residence.

(2) a mechanism for Parliament to scrutinise the statements of the Rules;[45] and

(3) administrative detention for those subject to deportation.[46]

2.13 Under the heading "General principles", section 1 of the 1971 Act provides that those having the right of abode in the UK:

> shall be free to live in, and to come and go into and from, the United Kingdom without let or hindrance except such as may be required under and in accordance with this Act to enable their right to be established or as may be otherwise lawfully imposed on any person.[47]

2.14 Section 1 goes on to provide that those not having the right of abode:

> may live, work and settle in the United Kingdom by permission and subject to the regulation and control of their entry into, stay in and departure from the United Kingdom imposed by the Act.[48]

2.15 Section 3 provides that persons who are not British citizens shall not enter the UK unless given leave to do so in accordance with the provisions of or made under the Act. They may be given leave to enter or remain for a limited or for an indefinite period and leave may be given subject to conditions including restricting their employment or occupation or requiring them to register with the police.[49] It also provides for leave to be varied[50] or to lapse.[51] This is discussed in more detail at paragraphs 2.32 and 2.33 below.

2.16 Sections 3A and 3B[52] give the Secretary of State power to make, by order, further provision with regard to the giving, refusing or varying of leave to enter or remain. Section 3C[53] automatically extends, on the same terms and conditions, the leave of a

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45 Immigration Act 1971, s 3(2).

46 Immigration Act 1971, sch 3, paras 2(2) and (3).

47 Immigration Act 1971, s 1(1).

48 Immigration Act 1971, s 1(2). Its requirements are qualified in certain respects. Section 1(3) provides that travel between the UK, any of "the Islands" (the Channel Islands and the Isle of Man) and the Republic of Ireland is not subject to control under the Act, thereby giving effect to the "common travel area". Section 8 dispenses the crews of ships and aircraft from the requirement of leave and disapplies the Act to members of diplomatic missions and households and certain visiting service personnel. It also empowers the Secretary of State to exempt classes of people from the Act. The Immigration (Exemption from Control) Order 1972 SI 1972 No 1613 exempts consular officers and the staff of certain international organisations from the provisions of the Act other than those relating to deportation and creates limited exemptions from the requirement of leave to enter. S 7(1) of the Immigration Act 1988 and the Immigration (European Economic Area) Regulations 2016, SI 2016 No 1052 currently remove many EEA and Swiss nationals and members of their families from control under the Act; see para 2.25 below.

49 Immigration Act 1971, s 3(1), as amended by the British Nationality Act 1981.

50 Immigration Act 1971, s 3(3).

51 Immigration Act 1971, s 3(4). See also Immigration (Leave to Enter and Remain Order) 2000, SI 2000 No 1161.

52 Inserted by Immigration and Asylum Act 1999, ss 1 and 2.

53 Inserted by the Immigration and Asylum Act 1999, s 3.

person who applies for an extension or variation of the leave before it expires. The extension covers the period in which their application is being considered and (normally) until any administrative review or appeal against a negative decision on their application is completed.

2.17 Under section 4(1), the power to give or refuse leave to enter the UK is to be exercised by immigration officers. The power to give leave to remain or to vary any leave is to be exercised by the Secretary of State. Paragraph 1(3) of schedule 2 to the Act provides that in the exercise of their functions, immigration officers shall act in accordance with such instructions (not inconsistent with the Rules) as may be given to them by the Secretary of State.

2.18 The principal provisions of the 1971 Act relating to the Rules are section 1(4) and section 3(2).[54] Section 1(4) provides:

> The rules laid down by the Secretary of State as to the practice to be followed in the administration of this Act for regulating the entry into and stay in the United Kingdom of persons not having the right of abode shall include provision for admitting (in such cases and subject to such restrictions as may be provided by the rules, and subject or not to conditions as to length of stay or otherwise) persons coming for the purpose of taking employment, or for purposes of study, or as visitors, or as dependants of persons lawfully in or entering the United Kingdom.

2.19 In addition to confirming that leave may be conditional, the subsection creates a duty to include in the Rules provision for workers, students, visitors and dependants.

2.20 Section 3(2) makes further provision with regard to the Rules. It provides first for the duty to lay them in Parliament:

> The Secretary of State shall from time to time … lay before Parliament statements of the rules, or of any changes in the rules, laid down by him as to the practice to be followed in the administration of this Act for regulating the entry into and stay in the United Kingdom of persons required by this Act to have leave to enter, including any rules as to the period for which leave is to be given and the conditions to be attached in different circumstances … [55]

2.21 Secondly, the subsection introduces a version of the "negative resolution" procedure. This procedure, alongside the requirements of section 1(4) and section 3(2) more generally, is discussed further in chapters 3, 5 and 12.

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[54] Immigration Act 1971, s 1(5) required that the Immigration Rules be so framed as not to restrict the freedom to come and go of Commonwealth citizens who were settled in the UK on the coming into force of the Act, or of their wives and children. S 1(5) was repealed by the Immigration Act 1988, s 1.

[55] This part of the subsection goes on to make it explicit that "section 1(4) above shall not be taken to require uniform provision to be made by the rules as regards admission of persons for a purpose or in a capacity specified in section 1(4) (and in particular, for this as well as other purposes of this Act, account may be taken of citizenship or nationality)".

SUBSEQUENT LEGISLATION

2.22 Since the 1971 Act, at least 16 statutes have been passed dealing wholly or partly with immigration or nationality. A list of them is in appendix 6 to this paper. The presence on the statute book of this number of separate pieces of legislation is a factor contributing to the complexity of UK immigration law, but is outside the scope of our terms of reference.[56]

THE PLACE OF THE IMMIGRATION RULES WITHIN THE SYSTEM OF IMMIGRATION CONTROL

2.23 The UK's immigration system currently distinguishes between three broad categories of people:

(1) British nationals and others with the right of abode;

(2) EEA (which includes EU) nationals and Swiss nationals and certain members of their families; and

(3) other nationals.

2.24 People in the first of these categories are not subject to immigration control.[57]

2.25 The immigration position of nationals of countries (other than the UK) in the EEA and of Switzerland, and members of their families, is currently governed primarily by section 7 of the Immigration Act 1988 and the Immigration (EEA) Regulations 2016.[58] Section 7 provides that those persons who have an enforceable EU right of entry or residence do not require leave to enter or remain in the UK. The Regulations give effect to EU Directive 2004/38/EC, which applies to EU citizens but is extended to nationals of countries in the EEA by virtue of having been incorporated into Annex VIII to the EEA Agreement.[59] Swiss nationals enjoy corresponding rights under the Agreement between the European Community and its Member States and the Swiss Confederation on the free movement of persons.[60]

2.26 EEA and Swiss nationals and certain of their family members entering the UK are not granted leave to enter and their passports are not stamped.[61] EEA and Swiss nationals and their families generally have the right to reside in the UK for three months, subject to not becoming an unreasonable burden on the social security system.[62] They have the right to reside for more than three months on condition that

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56 See paras 1.9 and 1.26 above.

57 For other exempt categories, see the footnote to para 2.18.

58 SI 2016 No 1052.

59 Joint Committee Decision 158/2007 (Official Journal L 124 of 8 May 2008).

60 21 June 1999, published in Official Journal L 114 of 30 April 2002.

61 Immigration (European Economic Area) Regulations 2016, SI 2016 No 1052, reg 11.

62 Immigration (European Economic Area) Regulations 2016, SI 2016 No 1052, reg 13.

they fall in a "qualified" category, or are a member of the family of a qualified person.[63] The right of residence becomes permanent after the completion of five years' residence in accordance with the Regulations.[64]

2.27 People not falling in the first two categories in paragraph 2.23 above or otherwise exempt from immigration control[65] are subject to the UK domestic immigration framework. We now briefly describe this framework.

2.28 The Home Office is responsible for immigration control. The Secretary of State is given direct responsibility for making the Rules and laying statements of the Rules before Parliament,[66] and for making various rules and regulations under the 1971 Act and other immigration statutes.

2.29 Immigration legislation does not generally provide criteria for entitlement to a grant of leave. This, together with setting out the procedures that will be followed in dealing with applications, is the function of the Rules.

2.30 A department within the Home Office, UK Visas and Immigration, is responsible for considering applications for permission to enter and remain, citizenship and asylum. Each year it takes over 3.6 million decisions about who may visit or stay in the UK, and has a workforce of 7,500 people.[67] Home Office staff include:

(1) entry clearance officers in British diplomatic posts abroad (and now increasingly also based in the UK) who issue visas and other forms of entry clearance to people before they travel to the UK;

(2) border force officers working at ports of entry who make decisions about whether or not to allow someone to enter the UK when they arrive here, as well as carrying out border controls on goods;

(3) caseworkers working in the Home Office's offices in Croydon, Sheffield and Liverpool or at one of their premium service centres around the country. These caseworkers make decisions about whether to allow people to extend their stay

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63 Qualified persons are: jobseekers who demonstrate that they are genuinely seeking employment and have a genuine chance of being engaged; workers; self-employed people; self-sufficient people who have sufficient resources not to become a burden on the social security system and comprehensive medical insurance; and students enrolled on courses of study who have comprehensive medical insurance and declare that they have sufficient resources not to become a burden on the social security system.

64 As part of the arrangements for the UK's withdrawal from the EU, the EU settlement scheme set out in Appendix EU to the Rules has been added to the Rules by the statement of changes Cm 9675. Its provisions will be introduced in a phased manner so as to be fully in force by 29 March 2019. Appendix EU provides for the grant of limited or indefinite leave to remain under the 1971 Act to eligible persons who are resident in the UK by midnight on 31 December 2020. Appendix EU is intended to implement the citizens' rights aspects of the draft Withdrawal Agreement drawn up between the UK and EU in March 2018.

65 See footnote to para 2.18.

66 Immigration Act 1971, s 3(2).

67 See https://www.gov.uk/government/organisations/uk-visas-and-immigration (last visited 20 December 2018).

here if they wish to stay longer than the period of stay initially granted by an entry clearance officer or by a border force officer;

(4) immigration enforcement staff who undertake a range of enforcement and compliance related functions, and have responsibility for removing people from the UK; and

(5) policy staff who are responsible for the policies underlying the immigration system and the drafting of the Rules and guidance.

2.31 Most applicants require "entry clearance" to come to the UK. Visa nationals, who are nationals of countries listed in Appendix 2 to Appendix V (Visitors) in the Rules, require prior entry clearance for all purposes of entry. Non-visa nationals do not need entry clearance to visit the UK, but do require it if they are coming for various other purposes and in all circumstances where they will be staying longer than six months.[68] Since 2000, entry clearance can itself be a form of "leave", as long as it stipulates the purpose for which the applicant wishes to enter the UK and contains conditions which the applicant must abide by.[69]

2.32 Leave is the permission to enter or remain in the UK contemplated by section 1(2) of the 1971 Act. Leave granted on entry (or which takes effect on entry, where a person has been issued with prior entry clearance) is referred to as leave to enter. It includes a permitted period of stay. Leave granted subsequently to leave to enter is referred to as leave to remain. An entry which by-passes immigration control is an illegal entry.

2.33 Leave to enter or remain can be granted on a limited or indefinite basis. Limited leave is leave to enter or remain which is for a limited period of time and may have conditions attached to it relating, for example, to employment. Indefinite leave (also called settlement[70]) is leave for an indefinite period which can be cancelled or revoked and which can lapse if the person is away from the UK for longer than two years.[71] A person can apply for the leave to be varied, for example, from limited to indefinite.[72]

STRUCTURE OF THE IMMIGRATION RULES

2.34 The Rules divide applicants into different immigration "routes" or categories of applicant to which particular rules apply.

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68 See para V 1.3 in Appendix V (Visitors) and para 24(ii) in Part 1 (Leave to enter or stay in the UK).

69 Immigration (Leave to Enter and Remain) Order 2000, SI 2000 No 1161.

70 "Settled" is defined by the Immigration Act 1971, s 33(2A), as referring to a person who is "ordinarily resident [in the UK] without being subject under the immigration laws to any restriction on the period for which he may remain".

71 Immigration (Leave to Enter and Remain) Order 2000, SI 2000/1161, art 13(4). It is anticipated that those granted indefinite leave to remain under the EU settlement scheme will be able to remain outside the UK for up to five years without their leave lapsing, in line with the draft Withdrawal Agreement: Statement of Changes in Immigration Rules Cm 9675.

72 Certain immigration categories, for example students, have a maximum time which can be spent in the UK in that category.

2.35 The main categories of applicant covered by the Rules are broadly set out in the following list (which is intended to provide an overview and is not exhaustive). They are examined more closely in the next section of this chapter.

(1) the points-based system, which includes the majority of work and student routes (discussed below at paragraphs 2.42 to 2.45);

(2) family members of British citizens and settled persons (discussed below at paragraphs 2.46 to 2.51);

(3) asylum (discussed below at paragraphs 2.54 to 2.56);

(4) armed forces;

(5) self-employment and business people;[73]

(6) short-term students;

(7) work; [74]

(8) work experience; [75]

(9) stateless persons; and

(10) visitors.

2.36 The organisation and structure of the Rules, which reflects their development over time, is discussed more fully in chapter 7. What follows here is an outline.

2.37 The majority of work, study and business/investment routes, which make up the 'points-based system', fall within Part 6A and various of the Appendices to the Rules. The pre points-based system categories which they largely replaced are now mostly (but not wholly) deleted. The old Part headings and numbers, however, remain in the main body of the Rules (Part 3: students, Part 4: Work experience, Part 5: working in the UK, Part 6: self-employment and business people).

2.38 Similarly, the Rules covering visitors, family members of British citizens and settled persons, and HM forces-related persons have been largely replaced, for new applicants, with the new sets of requirements drafted as Appendices (respectively Appendix V, Appendices FM and FM-SE and Appendix Armed Forces). The old Parts, however, have remained in place in the main body of the Rules, some containing transitional provisions for persons initially granted leave under the preceding regime. Recent new additions, covering indefinite leave for Turkish workers and business persons, and the EU settlement scheme, have also been added to the Rules as Appendices (respectively Appendices ECAA and EU).

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73 Cases falling outside the points-based system.

74 Cases falling outside the points-based system.

75 Cases falling outside the points-based system.

2.39 The Rules contain separate Parts relating to asylum, temporary protection and stateless persons at Parts 11, 11A, 11B and 14.

2.40 Other than category-specific requirements, the Rules also contain a number of general provisions including definitions, requirements for valid applications for leave to remain, general grounds for refusal which apply to certain categories of entry and stay, and provisions relating to deportation and administrative review.

OVERVIEW OF THE MAIN CATEGORIES OF THE IMMIGRATION RULES

The points-based system

2.41 In 2008, the Government introduced a points-based system for non-EU[76] immigration.[77] It has been implemented in stages through successive changes to the Rules. The points-based system replaced a broad range of work and study visa categories which had evolved over time on a piecemeal and uncoordinated basis. These included the Highly Skilled Migrants' Programme, work permit schemes, and quota-based schemes for certain types of low-skilled work. The key policy aims for its introduction were "a more efficient, transparent and objective application process" with greater efficiency, transparency, and objective decision-making.[78] The points-based system was introduced into the Rules as Part 6A (Points-based system), together with Appendices covering required attributes (A), maintenance levels (C for main applicants and E for dependants), and English-language skill levels (B).

2.42 The points-based system consists of five "tiers". Each of these contain several different categories of leave (and some sub-categories) with varying associated conditions and eligibility requirements. The current categories are as follows:

(1) Tier 1 is designed for "high-value" (originally called "highly skilled") non-EEA nationals who can make a substantial economic contribution to the UK. Following the closure of Tier 1 (General), it now consists of the following sub-categories:

(a) investors;

(b) entrepreneurs;[79]

(c) graduate entrepreneurs;[80] and

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76 This term is used for convenience to describe applicants who do not have rights under the provisions discussed in paras 2.25 and 2.26 above.

77 For a summary of its introduction, see *Mandalia v Secretary of State for the Home Department* [2015] UKSC 59, [2015] 1 WLR 4546 at [2].

78 See, HM Government (2006), A Points-Based System: Making Migration Work for Britain (2006) Cm 6741, para 3.25 and HC Deb 5 December 207 c72-75WMS (by the then Home Secretary, Jacqui Smith MP).

79 The Immigration Rules implementing the Tier 1 (Entrepreneur) and Tier 1 (Investor) categories came into effect on 30 June 2008, replacing the previous provisions for Business Persons, Investors, Innovators, Self-Employed Lawyers, Writers, Composers and Artists.

80 A maximum of 20 graduates per institution can apply to stay in the UK for one year in the first instance and for a maximum of two years to develop business ideas. They must be endorsed, rather than sponsored, by a UK institution (their "authorised endorsing body"). The list of authorised endorsing bodies is published on the

(d) people of "exceptional talent" such as world leaders and future leaders in the sciences, humanities, engineering and digital technology.[81]

(2) Tier 2 is the main route for skilled non-EU nationals who wish to work in the UK.[82] They must be skilled workers with a job offer from a UK employer. Tier 2 has four sub-categories: general, intra-company transfer, sports person and minister of religion;

(3) Tier 3 is the route for unskilled workers to come to the UK to fill specific temporary labour shortages. However, this tier has never been opened;

(4) Tier 4 is for students who wish to come and study in the UK.[83] Students can apply under the general category to study in either further or higher education and under the child category to attend an independent school.[84] They must have been offered a place at a licensed education institution;

(5) Tier 5 is designed for temporary non-EU workers whose presence serves wider non-economic objectives (such as cultural and knowledge exchange).[85] There are two sub-categories:

(a) The Youth Mobility Scheme allows citizens aged 18 to 30 from eight partner participants in the scheme (Australia, New Zealand, Canada, Japan, Hong Kong, South Korea, Taiwan and Monaco) to come to the UK for a period of 2 years;

Home Office website and every year the Home Office invites qualifying higher education institutions to become endorsing bodies. They must be Tier 4 sponsors. From 6 April 2013, this scheme was expanded to include a maximum of 100 overseas graduates who can be endorsed each year by UK Trade and Investment (now the Department for International Trade) to set up a business in the UK.

81 Applications under this route began in August 2011 with a limit of 1,000 places per year, which was raised to 2000 in January 2018. These places are divided between the Arts Council, the Royal Society, the Royal Academy of Engineering, the British Academy and, since 6 April 2014, Tech City UK (now Tech Nation). Those applying under Tier 1 (Exceptional Talent) do not need a licensed sponsor but need to be endorsed by one of these bodies.

82 Since 27 November 2008, it has replaced the provisions for work permit holders, ministers of religion, airport based operational ground staff, overseas qualified nurses or midwives, seafarers, Jewish agency employees and overseas representatives.

83 Tier 4 was introduced in four phases, with full implementation on 22 February 2010. Since this date, anyone applying for immigration permission under Tier 4 has required a valid confirmation of acceptance for studies (CAS) from a Tier 4 sponsor. The reporting duties of Tier 4 sponsorship also became mandatory from this date. Since the Tier was first introduced in March 2009, the requirements for both Tier 4 sponsors and applicants have changed many times.

84 On 31 March 2009, Tier 4 replaced the previous provisions in the Immigration Rules for these and other student categories with two subcategories: Tier 4 (General) Student and Tier 4 (Child) Student.

85 On 27 November 2008, it replaced the provisions for working holidaymakers, some work permits in the creative and sporting sector, exchange teachers and language assistants, GATS, International Association for the Exchange of Students of Technical Experience, International Firefighter Fellowship programme, EU Leonardo da Vinci programme, Rudolf Steiner, medical training initiative, training and work experience scheme, China graduate work experience programme, non-pastoral religious workers, visiting religious workers, voluntary workers, overseas domestic workers in diplomatic households, overseas government employees, and sponsored researchers.

(b) The temporary workers category has 5 further sub-categories:

creative and sporting;

religious workers;

charity workers;

Government Authorised Exchange schemes; and

workers covered by the UK's obligations under international agreements.

2.43 Each category of leave specifies certain mandatory criteria which must all be satisfied for an applicant to be eligible for leave to be granted. Each of the key category-specific criteria ("attributes") has a fixed number of points attached. In most cases, a person who satisfies the mandatory eligibility criteria will automatically accrue the number of points required, and a person who cannot satisfy one of the criteria will not have the number of points needed. The Rules also contain detailed requirements on specified documents and forms.[86]

2.44 Most categories require an application to be made by a sponsor (such as the employer or education provider), as well as an application by the individual concerned. The sponsor must apply for a licence to sponsor migrants under the relevant tier, and be put on the register of licensed sponsors. The exceptions where no sponsor is required include applicants who are in the UK under Tier 1 (Investor), Tier 1 (Entrepreneur) or Tier 1 (Exceptional Talent), and applicants in Tier 5 (Youth Mobility Scheme). There are also a limited number of non-points-based system immigration categories which allow applicants to work or study without a sponsor.[87]

2.45 It is uncontroversial that the term 'points-based system' is now a misnomer in most cases. The term suggests a scheme whereby applicants can earn points from a selection of attributes, according to their own particular skills, in order to reach a particular minimum score. However, the primary category for which this characterisation held true was Tier 1 (General), which was closed to new applicants in 2010/2011. In the vast majority of Part 6A categories, an applicant must earn a minimum number of points in respect of requirements set out in the Appendices, but there is only one way of earning these points, thus making the points mechanism arguably redundant.[88]

Family members

2.46 Family members of British citizens, settled persons or those with refugee leave/Humanitarian Protection make up a further category of applications for leave to enter or remain in the UK each year. The provisions for such applicants seeking to join

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86 See, for example, Appendix A (Attributes), paras 5(a) and 6A.

87 For example, the spouse or civil partner of a settled person.

88 For one example of a remaining actual points-based assessment, see the attributes table for Applications for Certificates of Sponsorship under the Tier 2 (General) limit, found at Table 11D of Appendix A.

their family members in the UK are principally accommodated in three parts of the Rules.[89] These are:

(1) Part 8 (Family members);

(2) Appendix FM (Family members); and

(3) Appendix FM-SE (Family members – specified evidence), which is effectively an annex to Appendix FM.

2.47 Appendix FM (Family members), which replaced Part 8 for most new applicants from 9 July 2012, contains the majority of the relevant Rules. This brings together the Rules on applications from the following categories of family members applying to join, or remain with, a relative settled in the UK:

(1) partners (which includes fiancé(e)s, proposed civil partners, spouses, civil partners and unmarried partners – including same-sex partners);

(2) bereaved partners;

(3) persons with limited leave as a partner who are victims of domestic violence;

(4) children of parents with limited leave as a partner or parent;

(5) parents of British or settled children; and

(6) adult dependent relatives.

2.48 Appendix FM (Family members) cross-refers to Appendix FM-SE (Family members – specified evidence), which sets out the specified evidence required to meet certain provisions in Appendix FM (Family members), in particular the financial requirements.[90]

2.49 Appendix FM seeks to incorporate fully within the Rules, in relation to applications by persons applying under the Appendix (and other applications which are considered under the Appendix), the assessment of:

(1) family life claims under Article 8 of the European Convention on Human Rights; and

(2) claims relating to the Secretary of State's duty under section 55 of the Borders, Citizenship and Immigration Act 2009 to take into account the need to safeguard and promote the welfare of children.

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89 Section 1(4) of the Immigration Act 1971 requires the Secretary of State to make provision within the Immigration Rules for the admission of "dependants of persons lawfully in or entering the United Kingdom". This will include family members of British citizens, settled persons or those with refugee leave/Humanitarian Protection, as well as dependants of migrants in work and study routes.

90 GEN.1.4. Appendix FM states that "specified" means specified in Appendix FM-SE, unless otherwise stated. Part 8 (Family members) also cross-refers to Appendix FM-SE, note para A281 which states: "In Part 8 "specified" means specified in Appendix FM-SE …".

2.50 This is effected primarily through exceptions to eligibility requirements in Section EX and the exceptional circumstances provisions.[91]

2.51 The requirements for partners and children of foreign nationals in work, business and study routes (where permitted to enter as such) are found in Part 5, for non points-based system categories, and Part 8, for points-based system categories.[92]

Private life

2.52 There is a similar mechanism in relation to Article 8 private life claims which is found in the "private life" Rules in Part 7 (Other categories).[93] However, there is no express exceptional circumstances provision in the private life Rules, which instead envisage leave to remain being granted outside the Rules on Article 8 grounds where the requirements of paragraph A276ADE are not met and Article 8 would otherwise be breached.[94]

Other non points-based applications

2.53 There are a number of other immigration categories that are outside the points-based system. By far the largest is visitors entering the UK for a short period for business, family, social purposes or tourism. Other residual categories outside that system are concerned with the right to live and work in the UK. These include, for example:

(1) short-term students and short-term students (child)[95];

(2) domestic workers in a private household;[96]

(3) representatives of overseas businesses;[97] and

(4) people from Commonwealth countries with UK ancestry.[98]

Asylum and temporary protection

2.54 The law relating to asylum in the UK is governed by international law under the 1951 Geneva Convention Relating to the Status of Refugees, the European Convention on Human Rights, and the first phase of the Common European Asylum System. This

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91 See paras GEN.3.1 to GEN.3.2 in Appendix FM requiring the applicant to establish that there are exceptional circumstances which could render a refusal of leave a breach of Article 8 ECHR by reason of 'unjustifiably harsh consequences' for the applicant or family member.

92 For family members of Part 5 migrants, see paras 193A to 199B of Part 5 (Working in the UK). For family members of relevant points-based system migrants, see paras 319A to 319K of Part 8 (Family Members) and Appendix E (Maintenance (funds) for the family of relevant points based system migrants.

93 See para 276ADE.

94 See para 276BE(2).

95 See paras A57A to A57H (in Part 3 (Students)).

96 See paras 159A to 159K (in Part 5 (Working in the UK)).

97 See paras 144 to 151 (in Part 5 (Working in the UK)).

98 See paras 186 to 193 (in Part 5 (Working in the UK)). Applicants over the age of 17 who have at least one grandparent born in the UK may be eligible. See also Home Office, *UK ancestry* (2016), p 9.

includes the Qualification Directive, the Reception Conditions Directive, the Asylum Procedures Directive and the Dublin III Regulation.[99]

2.55 The Rules incorporate asylum law and procedures within domestic law. Parts 11, 11B and 12 of the Rules set out requirements which concern asylum, humanitarian protection and family reunion.

2.56 The Displaced Persons (Temporary Protection) Regulations 2005[100] and Part 11A (Temporary protection) of the Rules address temporary protection, and give effect to Directive 2001/55/EC (The Temporary Protection Directive). This Directive, when triggered, provides for minimum standards of temporary protection in the event of a mass influx of displaced persons to the EU. It has never been triggered in the UK.[101]

Deportation

2.57 Part 13 (Deportation) of the Rules forms part of the legal framework covering the deportation of foreign nationals,[102] and its provisions cover aspects including:

(1) the circumstances in which a deportation order can be made;

(2) the deportation of family members of a person against whom a deportation order has been made;

(3) revocation of deportation orders; and

(4) the requirements that need to be met in order for an Article 8 claim that is raised in the context of deportation to succeed.

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99 The Qualification Directive, European Council Directive 2004/83/EC; the Reception Conditions Directive, Council Directive 2003/9; the Procedures Directive, Council Directive 2005/85/EC; the Dublin III Regulation, Regulation (EU) No 604/2013.

100 SI 2005 No 1379.

101 See para 354 (Part 11A (Temporary protection)).

102 The powers to deport are found in ss 3 and 5 of the Immigration Act 1971, covering respectively liability for deportation where the Secretary of State deems this to be conducive to the public good, and the power to issue a deportation order. When a deportation order is in force the deportee will not be able to re-enter the UK. Section 32 of the UK Borders Act 2007 introduced the “automatic deportation” regime, by deeming deportation of “foreign criminals” to be conducive to the public good. Foreign criminals include persons who have been convicted of an offence in the UK and sentenced to a period of imprisonment of at least 12 months.

Chapter 3: The status of the Immigration Rules

3.1 Any proposals for the redesign of the Immigration Rules must have regard to their legal basis. In particular, we need to consider what the Immigration Act 1971, as interpreted by the Supreme Court in *R (Alvi) v Secretary of State for the Home Department*, requires them to contain.[103]

3.2 This chapter considers these issues, as well as two key aspects of immigration policy-making by the Secretary of State which the courts have held do not require to be laid as Rules:

(1) the requirements for educational institutions and employers to obtain and maintain sponsor licences for sponsoring Tier 4 students and Tier 2 and 5 migrants; and

(2) concessionary policies for the granting of leave outside the Rules, or which have the practical effect of relaxing criteria in the Rules.

THE LEGAL STATUS OF THE RULES

3.3 The Rules have often been said to escape conventional legal categorisation.[104] There has been judicial disagreement about whether or not the Rules are a form of delegated legislation. For example, Lord Justice Roskill considered that the Rules were "as much delegated legislation as any other form of rule-making activity or delegated legislation which is empowered by Act of Parliament".[105] However, Lord Denning expressed the view that referring to the Rules as delegated legislation "goes too far".[106] Similarly, Lord Justice Lane described the Rules as merely "a practical guide" for immigration officers and "little more than explanatory notes of the [Immigration Act 1971] itself".[107] More recently, Lord Hoffmann described the Rules in the following terms:

> They are not subordinate legislation but detailed statements by a minister of the Crown as to how the Crown proposes to exercise its executive power to control immigration.[108]

3.4 Related to controversy about the Rules' legal character has been controversy about the basis for making them. One of the difficulties in this regard is that section 3(2) of the 1971 Act does not explicitly empower the Secretary of State to make the Rules.

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103 *R (Alvi) v Secretary of State for the Home Department* [2012] UKSC 33, [2012] 1 WLR 2208.

104 For example, *Odelola v Secretary of State for the Home Department* [2009] UKHL 25, [2009] 1 WLR 1230 at [6] by Lord Hoffmann and *Secretary of State for the Home Department v Pankina* [2010] EWCA Civ 719, [2010] 3 WLR 1526 at [13] by Sedley LJ.

105 *R v Chief Immigration Officer, Heathrow Airport* [1976] 1 WLR 979, [1976] 3 All ER 843, 985.

106 *R v Secretary of State for Home Affairs* [1977] 1 WLR 766, [1977] 3 All ER 452, 780.

107 *R v Secretary of State for Home Affairs* [1977] 1 WLR 766, [1977] 3 All ER 452, 785.

108 *Odelola v Secretary of State for the Home Department* [2009] UKHL 25, [2009] 1 WLR 1230 at [6].

Instead, it makes some stipulations as to what is to be contained in the Rules and also requires that “statements of the Rules” must be laid before Parliament. During the passage of the Bill the Government explained its intention in this regard:

> The noble Lord, Lord Wade, asked me about the meaning of the phrase "statements of the Rules", which appears in this clause. It has been the practice since 1962 to include in the statement the actual rules themselves; the statement of the rules is the full White Paper setting out the Rules which is before the House now. The "statements of the Rules" are the Rules. So, one might ask: Why then do we not refer to the Rules themselves rather than to a statement of the Rules? The answer is that Immigration Rules are not statutory instruments. The draftsman has deliberately avoided using words such as "laying the Rules before Parliament" because these words are associated with Parliamentary control of statutory instruments. The Rules are not statutory instruments but rules of guidance for immigration officers issued by the Secretary of State. They are not statutory instruments and are not couched in the legal language of a statutory instrument. That is the reason for the reference to "statement of the Rules".[109]

3.5 It is therefore clear that the Government in promoting the Bill did not intend the Rules to be a form of statutory instrument, but rather an official form of guidance for immigration decision-makers. In addition, the Government intended that the content of a “statement” of the Rules would, in practice, be identical to the Rules themselves. Since section 3(2) only refers to the statements, there has been uncertainty over the source of the Secretary of State’s power to make and amend the Rules. Some, for instance, have argued in the past that the Rules fell within the Royal prerogative power.

3.6 Historically, the Royal prerogative was the main source of UK state power in relation to foreign affairs. The prerogative generally extends to the making of international treaties and, to some extent, to controlling the presence of aliens, though its boundaries in this second respect are unclear.[110] The recent Supreme Court judgment in *R (Miller) v Secretary of State for Exiting the European Union* described prerogative powers as follows:

> The Royal prerogative encompasses the residue of powers which remain vested in the Crown, and they are exercisable by ministers, provided that the exercise is consistent with Parliamentary legislation.[111]

3.7 In short, a minister can exercise prerogative powers if they have not been suspended or abrogated by a statutory provision.[112]

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109 *Hansard* (HL), 12 October 1971, vol 324, col 321 by Lord Windlesham (Minister of State, Home Office).

110 It is generally agreed that the prerogative power extends to interning, expelling or otherwise controlling enemy aliens in times of war. Conversely, the Supreme Court held in *Alvi* that it has never extended to controlling the presence of Commonwealth citizens, who are not aliens. It has not been finally decided whether the prerogative power previously extended to controlling the presence of friendly aliens.

111 *R (Miller) v Secretary of State for Exiting the European Union* [2017] UKSC 5 at [47].

112 *Attorney-General v De Keyser’s Royal Hotel* [1920] AC 508.

3.8 The question of the extent to which immigration control currently falls within the Royal prerogative was addressed by the Supreme Court in *Alvi* and in *R (Munir) v Secretary of State for the Home Department*,[113] both decided in July 2012. The decisions confirmed that any prerogative power in the field of immigration had been superseded by the 1971 Act. Lord Hope in *Alvi* opined that the Rules were not delegated legislation, but went on to say:

> There is, of course, no enabling statute in this case. But the 1971 Act must now be seen as the source of the powers vested in the Secretary of State, and it is the Act which provides the statutory machinery for their exercise. The content of the rules is prescribed by sections 1(4) and 3(2) of the 1971 Act in a way that leaves matters other than those to which they refer to her discretion. The scope of the duty that then follows depends on the meaning that is to be given to the provisions of the statute.[114]

3.9 Lord Dyson in *Munir* agreed that the Rules were made under the 1971 Act:

> In my view, the power to make Immigration Rules under the 1971 Act derives from the Act itself and is not an exercise of the prerogative. As its long title indicates, the purpose of the 1971 Act was to replace earlier laws with a single code of legislation on immigration control.[115]

3.10 He went on to say:

> It is true that there is no provision in the 1971 Act which in terms confers on the Secretary of State the power or imposes on her the duty to make immigration rules. But for the reasons that follow, in my view it is implicit in the language of the Act that she is given such a power and made subject to such a duty under the statute.[116]

3.11 In the earlier case of *Odelola* v *Secretary of State for the Home Department*, Lord Neuberger had considered that the Rules may be "non-statutory in origin". Moreover, Lord Brown had described them as an indication of "how it is proposed to exercise the prerogative power of immigration control".[117] In *Alvi*, however, Lord Hope said:

> Although I said in paragraph 1 of *Odelola* that I agreed with Lord Brown's opinion, I think that it must be recognised that his statement as to the source of the power was wrong. The entry to and stay in this country of Commonwealth citizens was never subject to control under the prerogative. The powers of control that are vested in the Secretary of State in the case of all those who require leave to enter or to remain are now entirely the creature of statute. That includes the power to make rules of the kind referred to in the Immigration Act 1971.[118]

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113 *R (Munir) v Secretary of State for the Home Department* [2012] UKSC 32, [2012] I WLR.

114 *R (Alvi) v Secretary of State for the Home Department* [2012] UKSC 33, [2012] 1 WLR 2208 at [41].

115 *R (Munir) v Secretary of State for the Home Department* [2012] UKSC 32, [2012] I WLR 2192 at [26]. The other members of the court agreed with Lord Dyson.

116 *R (Munir) v Secretary of State for the Home Department* [2012] UKSC 32, [2012] I WLR 2192 at [27].

117 *Odelola v Secretary of State for the Home Department* [2009] UKHL 25, [2009] 1 WLR 1230 at [35] and [46].

118 *R (Alvi) v Secretary of State for the Home Department* [2012] UKSC 33, [2012] 1 WLR 2208 at [32 to 33] by Lord Hope; see also Lord Dyson at [80].

3.12 In *Munir* Lord Dyson noted section 33(5) of the 1971 Act,[119] but concluded from the Parliamentary debates that it was intended to reserve the prerogative in relation to enemy aliens.[120]

Discussion

3.13 The Supreme Court's decisions in *Alvi* and *Munir* have clarified the source of the power to make the Rules. The Rules are made under the 1971 Act. This potentially raises the argument that they are a form of delegated legislation within the meaning of the Interpretation Act 1978.[121] Delegated legislation (also known as subordinate legislation) has been described as "the delegation of power by primary legislation that gives authority to legislate subordinate to it".[122] This definition applies irrespective of whether the authority to legislate is implicit or explicit.

3.14 According to the Interpretation Act 1978, delegated legislation can take a variety of forms, including orders, rules, regulations, schemes, warrants, byelaws and other instruments made under any Act.[123] Not all forms of delegated legislation are laid in Parliament.[124]

3.15 The 1971 Act does not provide for the Rules to be statutory instruments. The Rules are not published formally as statutory instruments and do not have a statutory instrument number. Instead they are cited as a House of Commons Paper "Statement of Changes in Immigration Rules 1994 (HC 395)".

3.16 There are other forms of delegated legislation listed in the Interpretation Act 1978; one is simply "rules". But the Rules are in places written in a way that is imprecise and flexible; although the introduction of the points-based system has led to greater certainty and rigidity.[125] They include a range of distinct types. Many are hard-edged legal rules,[126] while others provide various forms of information.[127]

3.17 Secondly, as Lord Justice Buxton explained in *Odelola*:

> The usual origin of rules is that they are made by a rule-maker to control the behaviour of others, the subjects of the rules. But the Immigration Rules are made

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119 This subsection provides that "This Act shall not be taken to supersede or impair any power exercisable by Her Majesty in relation to aliens by virtue of Her prerogative".

120 *R (Munir) v Secretary of State for the Home Department* [2012] UKSC 32, [2012] I WLR 2192 at [25]; see also Ian Macdonald, "Rights of settlement and the prerogative in the UK - a historical perspective" [2013] *Journal of Immigration Asylum and Nationality Law* 17.

121 See Interpretation Act 1978, s 21(1).

122 D Greenberg, *Craies on Legislation* (8th ed 2004) para 1.1.8.

123 Interpretation Act 1978, s 21(1).

124 D Greenberg, *Craies on Legislation* (8th ed 2004) para 6.2.11.

125 See *R (Alvi) v Secretary of State for the Home Department* [2012] UKSC 33, [2012] 1 WLR 2208 at [42].

126 For example, para 276ADE, which sets out requirements to be met by an applicant for leave to remain on the grounds of private life.

127 For example, para 276A04, which explains what the Secretary of State will do in particular circumstances and para GEN.1.1 of Appendix FM (Family Members), which explains the purpose of the Rules in the Appendix.

by the same person, the Secretary of State, as has thereafter to act according to their requirements. One can of course in ordinary discourse speak of making rules for oneself, but it would be very unusual for such "rules" to create rights in others, as the Immigration Rules are said to do.[128]

3.18 The argument that the Rules are delegated legislation was rejected in *Odelola*.[129] This was cited with approval by Lord Hope in *Alvi* .[130]

3.19 In practical terms, the Rules govern "the practice to be followed" in regulating entry and stay under the 1971 Act and must therefore be followed by immigration officers, entry clearance officers and other Home Office staff.[131]

3.20 The Rules do not directly bind applicants for leave. It is a criminal offence to knowingly breach a condition of leave to enter or remain in the UK. [132] However, failure to meet, or ceasing to meet, a condition of entitlement to leave specified in the Rules[133] means only that leave will not be granted or may be curtailed.[134]

3.21 For these reasons we think it better to view the Rules as a unique form of legal text, not equating exactly to delegated legislation but having some of its characteristics. Essentially, they are a hybrid of administrative policy and legal rules. We do not consider that the unusual status of the Rules makes any difference to applicants in practice.

Consultation Question 6.

3.22 Do consultees agree that the unique status of the Immigration Rules does not cause difficulties to applicants in practice?

THE REQUIREMENT TO INCLUDE MATTERS IN THE STATEMENT OF RULES LAID IN PARLIAMENT

3.23 We noted in chapter 2 that the 1971 Act requires the Secretary of State to lay before Parliament statements of the Rules.[135] The 1971 Act also envisages that the Secretary of State may give "instructions (not inconsistent with the immigration rules)"

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128 *Odelola v Secretary of State for the Home Department* [2008] EWCA Civ 308, [2009] 1 WLR 126 at [16].

129 *Odelola v Secretary of State for the Home Department* [2008] EWCA Civ 308, [2009] 1 WLR 126, and Interpretation Act 1978, s 21(1).

130 *R (Alvi) v Secretary of State for the Home Department* [2012] UKSC 33, [2012] 1 WLR 2208 at [33].

131 Immigration Act 1971, s 3(2). See also *Secretary of State for the Home Department v Pankina* [2010] EWCA Civ 719, [2010] 3 WLR 1526 at [20] which states that the Rules are both "a code to be followed and a source of legal rights".

132 Immigration Act 1971, s 24.

133 For example, a student may no longer be following any course of study at all.

134 Immigration Act 1971, s 3(3)(a).

135 Immigration Act 1971, ss 1(4) and 3(2).

to immigration officers.[136] The Secretary of State also has the same residual power to produce guidance to departmental staff, or for the public, as any other minister.

3.24 The relationship between the Rules and external material such as instructions or guidance has come under detailed judicial scrutiny in the last decade. Instructions and guidance, along with prescribed forms, are further discussed in the next chapter. In this chapter we discuss the judicial developments which determined what the 1971 Act requires the Rules to contain, and therefore what needs to be laid before Parliament under section 3(2) of the Act, rather than merely dealt with in guidance.

3.25 On 23 June 2010, the Court of Appeal held in *Secretary of State for the Home Department v Pankina* that an application could not be refused on the grounds of not satisfying additional requirements contained in guidance. The relevant requirement in the Rules was that an applicant for leave to remain and work in the United Kingdom should have £800 in funds. However, evidential requirements for meeting this rule were prescribed in the points-based system policy guidance and included provision that the £800 should have been held for a period of three months. Lord Justice Sedley held that this provision "formed no part of the rules applicable to these cases. The only relevant criterion was the requirement in Appendix C that they should have £800 at the time of application".[137]

3.26 *Alvi* concerned the Tier 2 (General) scheme for skilled workers with a job offer. The claimant had been given leave to enter the UK as a physiotherapy student and after finishing his studies applied for leave to remain as a physiotherapy assistant. The Rules required an applicant to score a number of points for sponsorship and specified that no points would be awarded unless the job appeared on the then UK Border Agency's list of skilled occupations. In addition, the salary paid had to be at or above the appropriate rate for the job listed. An "Occupation Code of Practice" listing the skilled occupations was published separately on the Agency's website. The claimant's application had been refused because the job of an assistant physiotherapist did not meet the requirements in the Code of Practice.

3.27 One of the issues for determination was whether these requirements were in fact rules within the meaning of section 3(2), such that there was a duty to include them in the statement to Parliament under that subsection.

3.28 The principal judgments were delivered by Lord Hope and Lord Dyson. Lord Hope explained the distinction between the Rules on the one hand, and instructions or guidance on the other, as follows:

> The content of the rules is prescribed by sections 1(4) and 3(2) of the 1971 Act in a way that leaves matters other than those to which they refer to [the Secretary of State's] discretion. The scope of the duty that then follows depends on the meaning that is to be given to the provisions of the statute. What section 3(2) requires is that there must be laid before Parliament statements of the rules, and of any changes to the rules, as to the practice to be followed in the administration of the Act for regulating the control of entry into and stay in the United Kingdom of persons who

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136 Immigration Act 1971, sch 2 para 3.

137 *Secretary of State for the Home Department v Pankina* [2010] EWCA Civ 719, [2010] 3 WLR 1526 at [37].

> require leave to enter. The Secretary of State's duty is expressed in the broadest terms. A contrast may be drawn between the rules and the instructions (not inconsistent with the rules) which the Secretary may give to immigration officers under paragraph 1(3) of Schedule 2 to the 1971 Act. As Lord Justice Sedley said in *ZH (Bangladesh) v Secretary of State for the Home Department* … the instructions do not have, and cannot be treated as if they possessed, the force of law. The Act does not require those instructions or documents which give guidance of various kinds to caseworkers, of which there are very many, to be laid before Parliament. But the rules must be. So everything which is in the nature of a rule as to the practice to be followed in the administration of the Act is subject to this requirement.[138]

3.29 Lord Hope and Lord Dyson were agreed upon the basic requirement of section 3(2), namely that the obligation to lay before Parliament applies to:

> any requirement which a migrant must satisfy as a condition of being given leave to enter or leave to remain, as well as any provision "as to the period for which leave is to be given and the conditions to be attached in different circumstances".[139]

3.30 Lord Dyson also gave a slightly different formulation of the test, suggesting that a provision which "may" be determinative of an application must also be in the Rules. The reporter's headnote, meanwhile, uses the word "might" which did not appear in any of the judgements. Lord Dyson may have been acknowledging by these words that whether a particular requirement is determinative depends on the facts, or have intended to include within the definition rules that leave a measure of discretion to the decision-maker. Lord Clarke did not see any distinction between Lord Dyson's different formulations of the test.[140]

3.31 Lord Dyson also stated that section 3(2) does not extend to procedural requirements which do not have to be satisfied as a condition of the grant of leave to enter or remain.[141] Lord Hope noted that the 1971 Act permits instructions to be given to immigration officers to assist them with processing applications and said that "what is simply guidance to sponsors and applicants can be treated in the same way".[142]

3.32 The Supreme Court in *Alvi* applied its definition of a Rule to a number of provisions contained in the Occupation Code of Practice. It held that the following had the character of Rules within the meaning of section 3(2):

(1) the list of minimum salaries set out in the Code for determining "the appropriate rate for the job"; this was because the migrant must be paid at or above that

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138 *R (Alvi) v Secretary of State for the Home Department* [2012] UKSC 33, [2012] 1 WLR 2208 at [41] by Lord Hope.

139 *R (Alvi) v Secretary of State for the Home Department* [2012] UKSC 33, [2012] 1 WLR 2208 at [57] by Lord Hope and [94] by Lord Dyson.

140 *R (Alvi) v Secretary of State for the Home Department* [2012] UKSC 33, [2012] 1 WLR 2208 at [97] by Lord Dyson; at [121] by Lord Clarke.

141 *R (Alvi) v Secretary of State for the Home Department* [2012] UKSC 33, [2012] 1 WLR 2208 at [94].

142 *R (Alvi) v Secretary of State for the Home Department* [2012] UKSC 33, [2012] 1 WLR 2208 at [63]. Lord Dyson notes that the 1971 Act envisages the giving of instructions to immigration officers at [83].

rate to qualify for leave as a Tier 2 migrant. Therefore the rates themselves, and any changes to them, must be in a statement laid before Parliament.[143] Lord Hope suggested that this would have been avoided if the Rules had set out an objective criterion to determine the amount of any increase (such as one of the recognised indices for measuring inflation), describing that approach as setting out an "ambulatory rule";[144] and

(2) the statements in the Code that the job must be skilled at N/SVQ level 3 or above, and that the job of a physiotherapy assistant is below that level.[145]

3.33 A third aspect of the Code provision was also considered in *Alvi*. One way for an applicant to be awarded points was by passing the "resident labour market test", a policy requiring sponsors to assess whether resident workers are able to fill a role. Appendix A (Attributes) to the Rules stated that points would be awarded if the Certificate of Sponsorship indicated that "the Sponsor has met the requirements of that test, as defined in guidance published by the [United Kingdom Border Agency]". The guidance advised that jobs should be advertised in particular newspapers, journals and websites.[146] The majority view, led by Lord Dyson, was that these were Rules within the meaning of section 3(2). An applicant was required, as a condition of being granted leave to enter or remain, to provide a valid certificate of sponsorship which indicated that the sponsor had met the requirements of the resident labour market test in respect of advertising the job. It therefore had the character of a Rule.[147]

3.34 Lord Hope took a different view. He accepted that the requirement to test the resident labour market was a Rule, as was the requirement that the sponsor should give details of where and when the post was advertised. However, he considered that a direction as to where to look in the resident labour market was guidance:

> It tells the sponsor what procedure he should follow, and the kind of evidence he should examine, in order to fulfil his duties as sponsor to test the resident labour market in cases where that test must be satisfied … Failure to carry out that procedure will, of course, have an effect on whether or not the sponsorship certificate will assist the applicant. It will lead to the refusal of the application because the rule has not been satisfied. Lord Dyson and I are agreed on that point.

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143 *R (Alvi) v Secretary of State for the Home Department* [2012] UKSC 33, [2012] 1 WLR 2208 at [60] and [102].

144 *R (Alvi) v Secretary of State for the Home Department* [2012] UKSC 33, [2012] 1 WLR 2208 at [60].

145 *R (Alvi) v Secretary of State for the Home Department* [2012] UKSC 33, [2012] 1 WLR 2208 at [61] to [62] and [102]. The Occupation Code of Practice had specified expressly that the job of physiotherapy assistant fell below the N/SVQ 3 level. Lord Hope pointed out at [61] that the Rules themselves were misleading: para 82 of Appendix A merely required the job to appear on the list of skilled occupations; the job of physiotherapy assistant did appear in that list, but with additional wording containing the requirement for a job to be at or above level 3 and stating that the job of physiotherapy assistant was not.

146 This is the requirement that sponsors of Tier 2 (General) migrants must first assess whether resident workers are able to fill a position.

147 *R (Alvi) v Secretary of State for the Home Department* [2012] UKSC 33, [2012] 1 WLR 2208 at [106]. Lord Clarke and Lord Wilson agreed with Lord Dyson.

But it seems to me that information as to where the job may be advertised does not amount to the laying down of a rule that is determinative.[148]

3.35 Part of Lord Hope's reasoning seems to have relied on the fact that a list of recruitment websites was bound to change from time to time. He noted that the guidance as at April 2012, when the Supreme Court heard the case, showed some change in content from the list in February 2010. This was not a provision which, like salaries, could be updated automatically by using means such as indexation.[149]

Discussion

3.36 Beyond doubt, the principle laid down by the Supreme Court is that the Rules must include any requirement which an applicant must satisfy as a condition of being given leave to enter or remain. The Rules must also include any provision as to the period for which leave is to be given and the conditions to be attached in different circumstances. However, applying this definition in practice is not straightforward. The Supreme Court in *Alvi* was clear that determining whether section 3(2) applies must be determined on the facts of each case.[150] It is instructive to note that in *Alvi*, Lord Dyson and Lord Hope, considering the same facts, came to different conclusions about whether the advertisement requirements were Rules or not.

3.37 Following *Alvi*, a number of decisions applied its test as to what is a Rule. The following provisions were found not to be Rules within the meaning of section 3(2):

(1) a request made by the Secretary of State in correspondence for production of either P60s and a P45, or a letter from HM Revenue and Customs, evidencing an applicant's employment history in the UK. It was held that this did not amount to imposing a requirement, but merely sought evidence that the applicant satisfied the requirement in the Rules that an applicant must be working throughout his or her stay, in accordance with a work permit;[151]

(2) guidance that applicants seeking leave to remain to establish a business should provide bank statements to provide the necessary evidence of available funding. It was held that this guidance did not amount to a Rule because:

(a) it correctly said that the Rules did not specify the type of documents required;

(b) it stated that a person "should" provide evidence of their funds including bank statements, rather than "must"; and

(c) it did not say there had to be a bank account, only that if there was one, six months of statements should be produced. If they were not, a caseworker would assess whether failure to provide relevant and/or

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148 *R (Alvi) v Secretary of State for the Home Department* [2012] UKSC 33, [2012] 1 WLR 2208 at [58].

149 *R (Alvi) v Secretary of State for the Home Department* [2012] UKSC 33, [2012] 1 WLR 2208 at [58].

150 *R (Alvi) v Secretary of State for the Home Department* [2012] UKSC 33, [2012] 1 WLR 2208 at [64].

151 *R (Memon) v Secretary of State for the Home Department* [2015] EWHC 205 (Admin).

requested documents undermined the credibility of the applicant's business proposal;[152]

(3) guidance setting out how immigration officers should respond to requests for "removal decisions" from overstayers or illegal immigrants whose applications for leave to remain had been refused.[153] It was held that the guidance concerned purely procedural matters and contained nothing that had to be satisfied as a condition of the grant of leave to enter or remain;[154] and

(4) guidance on the qualifications necessary for the grant of leave to remain as a Tier (1) (General) Migrant. These specified that if an applicant could not find their qualification by using an "online calculator", they could contact the National Recognition Information Centre for the UK for an assessment of their qualification. It was held that the relevant criterion affecting entitlement to leave to remain was contained in the Rules (that the qualification must be recognised by the Centre), and the guidance had merely set out the machinery for establishing satisfaction of that criterion.[155]

REQUIREMENTS TO BE MET BY SPONSORS

3.38 In *R (New London College Limited) v Secretary of State for the Home Department* the Supreme Court considered guidance issued to education providers for the purposes of the Tier 4 scheme.[156] The Rules required applicants to be sponsored by an education institution holding a sponsor licence,[157] but the system for licensing sponsors was wholly governed by a separate document issued by the Secretary of State, entitled the Tier 4 Sponsor Guidance. This contained criteria that three claimant colleges could not satisfy, leading to the sponsor licences being withdrawn.

3.39 It was held that the mandatory criteria in the guidance for the award and retention of a sponsor licence had the character of Rules. However, subject to one reservation,[158] they were not Rules requiring compliance by the applicant as a condition of obtaining leave to enter or remain. As a result, they did not fall within section 3(2).[159] This was because the Rules in issue applied not to applicants but to educational establishments sponsoring applicants. The only requirement imposed on the applicants themselves

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152 *R (Akturk) v Secretary of State for the Home Department* [2017] EWHC 297 (Admin), [2017] 4 WLR 62. The court at [61] rejected the argument that *Alvi* should be distinguished on the basis that the present case was not concerned with the points-based system.

153 It is sometimes in the interest of an applicant whose application has been refused also to be subject to a removal direction.

154 *R (Oboh) v Secretary of State for the Home Department* [2015] EWCA Civ 514.

155 *R (Syed) v Secretary of State for the Home Department* [2014] EWCA Civ 196.

156 *R (New London College Limited) v Secretary of State for the Home Department* [2013] UKSC 51, [2013] 1 WLR 2358.

157 Para 116(d) of Appendix A.

158 The reservation arose out of the requirement in para 116(f) of Appendix A that the Confirmation of Acceptance for Studies, to be issued by the sponsor and produced by the applicant, should contain such information as was specified as mandatory in the Guidance.

159 *R (New London College Limited) v Secretary of State for the Home Department* [2013] UKSC 51, [2013] 1 WLR 2358 at [24]

was the requirement to be sponsored by a licensed sponsor, which was contained in the Rules.

3.40 Lord Sumption contrasted the position in *Alvi* in respect of the requirement that an applicant's job had to be listed in the United Kingdom Border Agency's list of skilled occupations. For this purpose, the critical feature of the list of skilled occupations was that it was part of the criteria for granting leave to enter or remain which the migrant had to satisfy and which determined the fate of his application. This was not true of the criteria for sponsor licensing.[160]

3.41 The *New London College* decision confirms that the Secretary of State has a range of ancillary and incidental administrative powers outside those laid down in the 1971 Act which could be used to administer the system of immigration. The criteria laid down in the guidance amounted to an exercise of such powers. However, the Secretary of State could not adopt measures which were inconsistent with the Act or the Rules, and, without specific statutory authority, could not adopt measures which were coercive or infringed the legal rights of others, or which were irrational or unfair.[161]

3.42 Lord Sumption also noted that part of the Rules applicable to students required the Confirmation of Acceptance for Studies to contain information "specified as mandatory in guidance". That was liable to fall foul of the principle in *Alvi* that "the Rules cannot lawfully incorporate by reference from the Guidance anything that constitutes a rule that if not satisfied will lead to the migrant being refused leave". The principle was not infringed on the facts, however, as the guidance did not require the Certificate to contain any material that the Rules did not already require the applicant to produce.[162]

3.43 The decision in *New London College* nevertheless sits a little awkwardly alongside the decision in *Alvi*. The majority view in *Alvi* was that the requirement to advertise jobs in certain newspapers, journals and websites were Rules within the meaning of section 3(2), despite the fact that the requirements were to be complied with by sponsors. Lord Dyson held that they fell within section 3(2) because the applicant was in turn required, as a condition of being granted leave to enter or remain, to provide a valid certificate of sponsorship which indicated that the sponsor had met the stipulated advertising requirements.[163]

3.44 In *New London College* the same analysis was not adopted of a Rule that, at least indirectly, affected the entitlement of an applicant to leave by limiting the range of colleges that the applicant could draw from as sponsors.

3.45 Even if the logic of the distinction drawn by Lord Sumption at paragraph 3.40 above is unassailable, it leaves a difficult line to be drawn between provisions of the *Alvi* type

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160 *R (New London College Limited) v Secretary of State for the Home Department* [2013] UKSC 51, [2013] 1 WLR 2358 at [24].

161 *R (New London College Limited) v Secretary of State for the Home Department* [2013] UKSC 51, [2013] 1 WLR 2358 at [27] to [29] by Lord Sumption.

162 *R (New London College Limited) v Secretary of State for the Home Department* [2013] UKSC 51, [2013] 1 WLR 2358 at [25].

163 It should be observed that this aspect of *R (Alvi) v Secretary of State for the Home Department* [2012] UKSC 33, [2012] 1 WLR 2208 is not binding, see at [129] by Lord Wilson.

and those at issue in *New London College*. The *Alvi* type relate to the behaviour of sponsors but nevertheless give rise to requirements to be complied with by applicants. The provisions of the type in *New London College* deprive an applicant of the possibility of applying for leave on the basis of being sponsored by a particular sponsor, but escape the requirement to be contained in the Rules.

3.46 In *R (Global Vision College Limited) v Secretary of State for the Home Department* the Court of Appeal considered guidance issued to sponsors under the Tier 4 (General) Student scheme.[164] The guidance stated that where the student had received from their sponsor a "Confirmation of Acceptance for Studies" (as required by the Rules), officials may nonetheless interview the student to confirm whether he or she met the required standard of English. If the student did not meet the required standard their application could be refused. It was held that this guidance did not amount to Rules, and instead:

> the questions and action taken as a result of responses are simply the application of a common-sense check to test the veracity, that is the truthfulness, of the contents of the Confirmation of Acceptance for Studies, one of the documents required by the Rules. The contents of paragraphs 385 and 521 are requirements for sponsors not applicants, but they are also guidance to which immigration officers can have regard without being treated as Rules.[165]

CONCESSIONARY POLICIES

3.47 In *Munir*, discussed above at paragraphs 3.8 to 3.10 above in relation to the source of the power to control immigration, the Supreme Court considered "Deportation Policy 5/96". This policy set out a general presumption that deportation would not normally proceed in cases involving families which included children who had accumulated seven or more years of continuous residence in the UK.[166] This was an example of a "concessionary policy" operating to the advantage of such families. One of the issues in the case was whether the policy, and its subsequent withdrawal, amounted to a change in the Rules and was ineffective as a result of not having been contained in a statement laid in Parliament.

3.48 Lord Dyson held that the less flexibility there is in a concessionary policy, the more likely it is that it needs to be incorporated into the Rules:

> If a concessionary policy statement says that the applicable rule will always be relaxed in specified circumstances, it may be difficult to avoid the conclusion that the statement is itself a Rule "as to the practice to be followed" within the meaning of section 3(2) which should be laid before Parliament. But if the statement says that the rule may be relaxed if certain conditions are satisfied, but that whether it will be relaxed depends on all the circumstances of the case, then in my view it does not

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164 *R (Global Vision College Limited) v Secretary of State for the Home Department* [2014] EWCA Civ 659 by Beatson LJ.

165 *R (Global Vision College Limited) v Secretary of State for the Home Department* [2014] EWCA Civ 659 at [66].

166 *R (Munir) v Secretary of State for the Home Department* [2012] UKSC 32, [2012] I WLR 2192.

fall within the scope of section 3(2). Such a statement does no more than say when a rule or statutory provision may be relaxed.[167]

3.49 In this instance it was held that Deportation Policy 5/96 was not a Rule within the meaning of section 3(2). This was because the document had made it "clear that it was important that each case had to be considered on its merits and that certain specified factors might (not would) be of particular relevance in reaching a decision."[168]

3.50 This conclusion raised, in turn, the issue of the source of the power to make immigration decisions otherwise than in accordance with the Rules. This is a power exemplified by the practice of granting leave "outside the Rules" in appropriate cases. The decision in *Munir* invalidated the analysis formerly adopted, namely that such decisions were examples of use of a residual power under the Royal prerogative.[169] Relying on the broad discretionary powers conferred by sections 3 to 3C of the 1971 Act, the Supreme Court held that the 1971 Act conferred a discretion on the Secretary of State "to grant leave to enter or remain even where leave would not be given under the Immigration Rules".

3.51 The decision in *Munir* was applied in *MS v Secretary of State for the Home Department*.[170] The Court of Appeal considered the Secretary of State's "Restricted Leave Policy" which governed the grant of leave to asylum seekers whose claims have been refused because they have committed particularly serious offences, but whom it was impossible to remove. It was held that this policy did not fall within section 3(2) because of its flexibility. The Court found that "the language throughout contemplates a case-by-case assessment with case-specific outcomes", and that the policy gave guidance on "what should 'normally' or 'usually' be done". This was notwithstanding evidence that the policy was being applied by immigration decision-makers over-formulaically and that in almost all cases conditions of a particular character were imposed, or renewals were only granted for six months. Lord Justice Underhill was not surprised that the policy was applied with uniformity because in many cases the same conditions may be appropriate.

3.52 In the next chapter, we consider the role, following *Alvi*, of the guidance which underpins the Rules, and the complexity in the application of the Rules which can be created by the interaction between them.

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167 *R (Munir) v Secretary of State for the Home Department* [2012] UKSC 32, [2012] I WLR 2192, 1 WLR 2192 at [45].

168 *R (Munir) v Secretary of State for the Home Department* [2012] UKSC 32, [2012] I WLR 2192, 1 WLR 2192 at [45].

169 See *R v Secretary of State for the Home Department ex p Kaur* [1987] Imm AR 278, discussed in *R (Munir) v Secretary of State for the Home Department* [2012] UKSC 32, [2012] I WLR 2192, 1 WLR 2192 at [42] to [44].

170 *MS & Anor v The Secretary of State for the Home Department* [2017] EWCA Civ 1190, [2018] WLR 389, [2017] WLR(D) 542, [2018] 1 WLR 389, [2018] Imm AR 117.

Chapter 4: Instructions, guidance and prescribed forms

4.1 The guidance that accompanies the Immigration Rules is extensive, running to several hundred individual documents in total.

4.2 There are two main categories of guidance published by the Home Office. First, there is guidance covering all the points-based system categories. These documents are directed to applicants or sponsors.[171] Secondly, there is guidance addressed to Home Office staff on how to decide applications.[172]

4.3 Some of the guidance directed to the Home Office is called "Immigration Directorate Instructions". These are provided for in paragraph 1(3) of schedule 2 to the Immigration Act 1971. For example, the Appendix FM (Family member) guidance documents are in this form.[173]

4.4 It is Home Office policy to publish all policy guidance unless its content is restricted. It serves as an important source of information for applicants and their advisers. In practice such guidance can frequently operate as the main form of guidance for applicants, as these documents are often much easier to understand than the Rules. A good example is the set of Immigration Directorate Instructions on Appendix FM categories.[174] Moreover, the Home Office provides links to the Immigration Directorate Instructions in its information pages for applicants.[175]

4.5 Some internal guidance remains unpublished. This is where it is defined as process rather than policy guidance, or where it is restricted. In addition, when internal guidance is published, sometimes pages can be omitted as being restricted to internal Home Office use only.[176]

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171 For example, *UK Visas and Immigration, Tier 1 (Entrepreneur) of the Points Based System – Policy Guidance* (2017) and Home Office, *Tier 4 of the Points Based System: Guidance for Sponsors* (2017).

172 For example, Home Office, *Tier 1 (Entrepreneur)* (2018).

173 For example, Home Office*, Immigration Directorate Instruction – Family Migration: Appendix FM Section 1.0a* (2017).

174 For instance, Immigration Directorate Instruction 1.7 on the financial requirement sets out the various sources of income that can be counted towards the minimum income threshold. They are divided into seven different categories (A to G) (which is not the case in Appendix FM and Appendix FM-SE, but is mirrored in the forms). This approach explains the relevant requirements in what seems a much clearer way than in the Rules. See Home Office. *Immigration Directorate Instruction Family Migration: Appendix FM Section 1.7: Appendix Armed Forces: Financial Requirement* (2017), p 18.

175 See, for example, https://www.gov.uk/uk-family-visa/proof-income, which contains an instruction to "check the detailed guidance", and provides a link to that guidance, where the applicant's income is complicated by particular factors. The link is also given to explain the evidence needed for each type of income relied on.

176 For example, Home Office, *Tier 1 (Entrepreneur)* (2018), pp 26-27.

ADMINISTRATIVE LAW PRINCIPLES HOLDING THE SECRETARY OF STATE TO HIS OR HER POLICY

4.6 Material extrinsic to the Rules, such as guidance, can also produce legal effects. Whilst *R (Alvi) v Secretary of State for the Home Department* concerned reliance by the Secretary of State on guidance which added to the restrictive conditions in the Rules, sometimes the opposite occurs. Material separate from the Rules may indicate a more flexible or relaxed position than the strict terms of the Rules. The concessionary policy considered in *Munir*, discussed at the end of the previous chapter, was an example of this.

4.7 Some cases have considered whether an applicant has a legitimate expectation that the more favourable position will be adopted. In *Hossain v Secretary of State for the Home Department,* Lord Justice Beatson rejected an argument that the specific wording of an application form created a legitimate expectation that the Rules at issue could be overridden. The relevant wording of the form did not provide such a sufficiently clear representation that the requirements of the Rules in question would be waived. [177]

4.8 In *Mandalia v Secretary of State for the Home Department*, the Supreme Court considered a process instruction enabling case workers to ask for more information where a requirement for evidence stipulated in the Rules was not satisfied.[178] The objective of the instruction had been to mitigate the potential harshness of the highly prescriptive requirements of the points-based system by permitting caseworkers a degree of flexibility in dealing with certain types of minor errors or omissions in applications. The issue was whether the instruction could be relied on by an applicant whose bank statements only showed 22 days' funds where 28 days were required. The Supreme Court interpreted the policy as covering the case and unanimously held that the Secretary of State had to follow her policy. The court did not couch its decision in terms of legitimate expectation, but in terms of a free-standing principle that where a public authority has adopted a policy as to how it proposes to act, the law ordinarily requires the policy to be followed. [179]

4.9 In *Lumba v Secretary of State for the Home Department*, the Supreme Court considered the extent to which decision-makers are required to make decisions on the basis of published rather than unpublished guidance. The appellants were foreign national prisoners who challenged the lawfulness of their detention pending deportation. A published policy in force during the period of their detention contained a presumption in favour of release, while an unpublished policy had also been adopted which was quite different and amounted to a near blanket ban on release. Three principles in relation to a policy were identified:

(1) it must not be a blanket policy admitting of no possibility of exceptions;

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177 *Hossain v Secretary of State for the Home Department* [2015] EWCA Civ 207.

178 The requirement was to produce bank statements showing funds held for 28 consecutive days.

179 *Mandalia v Secretary of State for the Home Department* [2015] UKSC 59, [2015] 1 WLR 4546 at [29] and [36].

(2) if unpublished, it must be consistent with published policy; and

(3) it should be published if it will inform discretionary decisions in respect of which the potential object of those decisions has a right to make representations.[180]

CONSISTENCY BETWEEN THE RULES AND GUIDANCE

4.10 Guidance cannot be inconsistent with the Rules. This would be contrary to the 1971 Act:

> In the exercise of their functions under this Act immigration officers shall act in accordance with such instructions (not inconsistent with the Immigration Rules) as may be given them by the Secretary of State …[181]

4.11 Lord Brown in *Mahad v Entry Clearance Officer* also said that guidance cannot generally be used to discern the intention behind the Rules:

> True, as I observed in *Odelola* … "the question is what the Secretary of State intended. The Rules are her rules". But that intention is to be discerned objectively from the language used, not divined by reference to supposed policy considerations. Still less is the Secretary of State's intention to be discovered from the Immigration Directorate Instructions issued intermittently to guide immigration officers in their application of the Rules.[182]

4.12 However, the courts have also held that, where there is a genuine ambiguity in the Rules, it can be permissible "perhaps exceptionally" to "get some assistance from the executive's formally published guidance".[183] Nevertheless, it is clear that the Rules are a higher form of law than guidance and that, in general, the courts will discern their meaning objectively from the language used.

4.13 In addition, Lord Justice Jackson confirmed in *Pokhriyal v Secretary of State for the Home Department* that following the *Alvi* decision:

> I do not think it is possible for the Secretary of State to rely upon extraneous material in order to persuade a court or tribunal to construe the Rules more harshly or to resolve an ambiguity in the Government's favour. The Secretary of State holds all the cards. The Secretary of State drafts the Rules; the Secretary of State issues Immigration Directorate Instructions and guidance statements; the Secretary of State authorises the public statements made by his/her officials. The Secretary of State cannot toughen up the Rules otherwise than by making formal amendments and laying them before Parliament.[184]

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180 *Lumba v Secretary of State for the Home Department* [2011] UKSC 12 at [20-38] by Lord Dyson.

181 Immigration Act 1971, sch 2 para 1(3).

182 *Mahad v Entry Clearance Officer* [2009] UKSC 16 at [10].

183 *AA (Nigeria) v Secretary of State for the Home Department* [2010] EWCA Civ 773 at [70] by Rix LJ.

184 *Pokhriyal v Secretary of State for the Home Department* [2013] EWCA Civ 1568, [2013] WLR (D) 471 at [43].

4.14 However, as noted in paragraphs 3.47 to 3.51 above, guidance can include "concessions" which are more favourable to applicants than a Rule which makes provision for the grant of leave to enter or remain. It has also been confirmed that the effect of the decision in *Alvi* has not been to abrogate the residual discretion of the Secretary of State to make a decision in favour of an applicant which is more generous than a literal reading of the Rules allows.[185]

4.15 Rules can cross-refer to guidance. In *Secretary of State for the Home Department v Pankina*, Lord Justice Sedley said:

> There is no absolute rule against the incorporation by reference of material into a measure which has legal effect, even when the measure is required to be laid before Parliament.[186]

4.16 He referred to *R v Secretary of State for Social Services, ex parte Camden London Borough Council* where Lord Justice Slade noted the acceptance of the practice by the Joint Committee on Statutory Instruments:

> Provided the reference is to an existing document and there is no question of 'sub-delegation' … there is no objection to the practice in the Committee's eyes … the control of such a tendency is in the hands of Parliament and not the courts. The courts must look to see whether in the instant case the reference offends against the provisions of the enabling statute, and in particular whether the outside document is in truth simply a part of the regulations.[187]

COMPLEXITIES CAUSED BY THE OVERLAY OF RULES AND GUIDANCE

4.17 In *Hossain v Secretary of State for the Home Department* Lord Justice Beatson was critical of the complex position created by the interplay of the Rules and guidance:

> As well as the Rules, it is necessary for those affected by the system to have regard to published policy guidance on aspects of the points-based system, such as the guidance on Tier 1 (Post-Study Work) status that is relevant in this case. That guidance changes frequently and only the most recent version is readily available online. In the present case, two versions of the guidance were placed in the bundle of documents before us. Lord Justice Underhill referred to the consequent difficulties in *Singh v Secretary of State for the Home Department* … The detail, the number of documents that have to be consulted, the number of changes in rules and policy guidance, and the difficulty advisers face in ascertaining which previous version of the rule or guidance applies and obtaining it are real obstacles to achieving predictable consistency and restoring public trust in the system, particularly in an area of law that lay people and people whose first language is not English need to understand.
>
> In this case, we are not concerned with lack of clarity resulting from the complexity of the Immigration Rules. The Rules are clear on the point at issue. To get the points

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185 *R (Munir) v Secretary of State for the Home Department* [2012] UKSC 32, [2012] I WLR 2192.

186 *Secretary of State for the Home Department v Pankina* [2010] EWCA Civ 719, [2010] 3 WLR 1526 at [24].

187 *R v Secretary of State for Social Services, ex p Camden LBC* [1987] 1 WLR 819 at p 828.

for the "date of award of qualification" attribute, the applicant must have obtained the qualification in the 12 months before the application. We are concerned with the effect of the language used in the application form and whether it gives rise to a public law legitimate expectation that strict compliance with the Immigration Rules will not be necessary … It is important that documents such as the policy guidance and the specified and thus mandatory application form use clear and consistent language.[188]

4.18 We have been informed by practitioners that there can be substantive inconsistencies, or apparent inconsistencies, within the same guidance document, or between what the Rules say and what the related guidance says on a particular issue. Inconsistencies can also be found between what different sets of related guidance say, and between what the guidance and/or the Rules say and the relevant form says.

4.19 As an example of internal inconsistency, the Policy Guidance relating to the Tier 1 (Entrepreneur) category has always contained guidance in relation to what constitutes "the equivalent of at least two new full-time jobs". A person applying for an extension of stay or indefinite leave to remain is required to show that they have created "the equivalent of at least two new full-time jobs for persons settled in the UK" for 12 months over the period for which their previous leave was granted. The guidance prior to 6 April 2014 stated in one place that the business must have created "two extra full-time paid jobs for at least two people who are settled in the UK and those jobs must have existed for at least 12 months each". Elsewhere it gave a number of examples of "acceptable employment" which did not meet these conditions. One for example stipulated that: "a single worker can be employed for 24 months"[189].

4.20 This inconsistency was corrected in the guidance from 6 April 2014, but a transitional provision was added into the guidance to assist people who had relied on the previous examples.[190]

4.21 From 6 April 2016, the same guidance was amended again on this point, to state that the transitional provision would not apply in the cases of applications for accelerated settlement on the basis of having created 10 jobs.[191] However, this exclusion was subsequently removed.[192]

4.22 An example of the confusion that can arise where application forms give apparently contradictory information as to the Rules can be seen in the Scottish case of *Felber v*

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188 *Hossain* v *Secretary of State for the Home Department* [2015] EWCA Civ 207 at [29] to [30].

189 See: Tier 1 (Entrepreneur) Policy guidance version 10/13, paras 84 and 91: http://webarchive.nationalarchives.gov.uk/20140322192116/https://www.gov.uk/government/publications/guidance-on-application-for-uk-visa-as-tier-1-entrepreneur (last visited 12 September 2018).

190 See: Tier 1 (Entrepreneur) Policy guidance version 04/14, para 100 http://webarchive.nationalarchives.gov.uk/20140607102608/https://www.gov.uk/government/publications/guidance-on-application-for-uk-visa-as-tier-1-entrepreneur (last visited 12 September 2018).

191 Tier 1 (Entrepreneur) Policy guidance version 04/14, para 171 http://webarchive.nationalarchives.gov.uk/20160510113226/https://www.gov.uk/government/publications/guidance-on-application-for-uk-visa-as-tier-1-entrepreneur (last visited 12 September 2018).

192 For more details of these referred to changes to guidance in the Tier 1 (Entrepreneur) category, see "Tier 1 (Entrepreneur) - summary and resources", LexisPSL Immigration Service (last visited 24 September 2018).

The Secretary of State for the Home Department, which also related to an application for indefinite leave to remain in the Tier 1 (Entrepreneur) category. The Outer House of the Court of Session accepted that the wording of form SET(O) at the time of the application might have suggested that the applicant only needed to have met the job creation requirement during their initial period of leave, rather than also in their last period of leave. However, the court noted that the form needed to be read "as a whole", including the materials that applicants were directed to from the form.[193]

PUBLISHING NEW GUIDANCE

4.23 Guidance is not subject to Parliamentary scrutiny and there is no requirement to consult on updated or new guidance. There is also no general oversight or scrutiny of the publication of new guidance.

4.24 Guidance can be subject to regular change. Publication of new and amended guidance is frequent and ongoing. This makes keeping up to date with the most recent versions extremely difficult and provides challenges in identifying what has or has not changed.

4.25 While guidance documents do in some cases have a box or heading detailing the changes since the last version was issued, in many cases they do not.[194] In addition, even when they do include such a box or heading, the information it gives can be limited.[195]

4.26 The same problems as arise in relation to the transitional arrangements (or "lead in-time") for changes to the Rules (see chapter 13) can also apply in relation to guidance, especially where a change is more restrictive than previous guidance. One example is the 6 April 2016 amendment to the Tier 1 (Entrepreneur) guidance noted above (which removed application of the transitional provision on job creation from those applying for accelerated settlement on the basis of having created 10 jobs).

DISCUSSION

4.27 The focus of our review is on simplifying the Rules. However, the Rules cannot sensibly be considered in isolation from the Home Office guidance. Guidance can often be an important (and sometimes the primary) source of information for applicants and decision-makers about how the requirements of the Rules will be applied. We therefore consider that our review presents an opportunity to consider how guidance could best support the Rules, and whether the guidance itself could be simplified. We would welcome general evidence from consultees on the extent to which guidance is helpfully published, presented and updated.

4.28 We would welcome examples from consultees of existing areas where guidance may contradict the Rules, or indeed any provisions of the guidance that cause problems in practice. It may be, for example, that the general drafting principles that we have

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193 [2017] ScotCS CSOH 130.

194 This is especially the case with the older guidance.

195 For example, see Home Office, *Transit* (2018) p 4. This merely informs the reader that the guidance has been amended from the last version of this guidance.

developed in chapters 9 and 10 could also be applied to the drafting of future guidance.

Consultation Question 7.

4.29 To what extent is guidance helpfully published, presented and updated?

Consultation Question 8.

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

4.31 In chapter 14, which considers the online presentation of the Rules, we seek views as to the benefits there might be in providing a single source of reference for applicants, caseworkers and practitioners. If guidance is to supplement, rather than simply echo the Rules, there is a case for improved navigation between the Rules and guidance, possibly through the creation of an interface between the two documents.

APPLICATION FORMS

4.32 As well as guidance, application forms are a form of external material which is an important aspect of the immigration process, and their contents have been the subject of litigation in some cases, as discussed above. The Rules frequently insist on completion of a specified application form. Sections of the form are designated, on the form or in related guidance notes, as being mandatory. Failure to use or complete a specified form will result in an application being treated as invalid, although Home Office caseworkers can give applicants a single opportunity to correct this.[196] If an application is rejected as invalid an applicant may become an overstayer.[197]

4.33 The application forms themselves undergo user testing and consultation before they are launched. The process includes discussion with legal representatives, sponsors and applicants.[198] Once in use, a process of continuous improvement is applied based on feedback and monitoring.

4.34 Online application forms have been the norm for several years in relation to entry clearance applications to the UK from all countries except North Korea. In 2016, the Home Office commenced its roll out of Access UK, a new platform for online entry clearance applications, across 180 countries in 10 languages, covering standard visitor, marriage and permitted paid engagement visas. This replaced the existing visa4uk online service in those categories with shorter application forms tailored to the

196 Part 1 (Leave to enter and stay in the UK), para 34B.

197 Because they lose the protection of s 3C of the Immigration Act 1971.

198 This is conducted by external contractors at the instruction of the Home Office. The form of engagement is varied depending on the user of the application.

specific visa category. Access UK is also available for use on mobile devices. A further roll-out of Access UK occurred in March 2018, extending the new service to many other categories of entry.

4.35 There has also been a process of transformation of in-country application processes from a system based on paper applications to an online system, as online application forms have been introduced in category after category. These are often first offered on an optional basis, and then some switch to online only. Since May 2018, applications for indefinite leave to remain in various categories that were previously submitted by hard copy form can now be submitted online.

4.36 A new streamlined immigration application process is being introduced. This will permit more in-country applicants to make an online application. Applicants will be able to book and attend a free appointment at new UK Visa and Citizenship Application Service (UKVCAS) centres in six major cities, operated by a private-sector company, Sopra Steria. There will also be an additional 50 local service centres providing appointments in libraries for which a fee will be payable. Next-day and walk-in appointments will be available for extra fees. A premium service in London will also be offered on a fee-paying basis. At the appointment the applicant's passport will be checked and they will be able to have their photo and fingerprints taken at a self-service biometric kiosk.

4.37 Applicants will also be able to submit their supporting evidence at the appointment. The evidence will then be copied and sent to UK Visas and Immigration, meaning that people will not have to part with important documents, such as passports, while the applications are processed.[199]

4.38 Applicants using the service will also be able to upload documentary evidence in advance of the appointment.

4.39 The Home Office anticipates that paper applications will eventually be withdrawn altogether for many applicants. The November 2018 guidance which introduces the UKVCAS states that "over the next few months, the majority of paper application forms will be withdrawn".[200]

4.40 It has been reported to us that there are difficulties in the hard copy application process. It is not straightforward to locate the correct application form. There is no page which links to all forms that is immediately accessible from the UK Visas and Immigration home page. There is a page which links to all of the remaining hard copy forms, but this is located in the 'fees and forms' collection, which is part of UK Visas

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199 See https://www.gov.uk/guidance/ukvis-new-front-end-services-what-you-need-to-know (last visited 11 January 2019) and https://www.gov.uk/government/news/sopra-steria-has-been-awarded-a-new-ukvi-contract (last visited 20 July 2018). Now supported by amendments to the Immigration Rules as to the requirements for a valid application: HC 1534, laid before Parliament on 11 October 2018. See also the explanatory notes: https://www.gov.uk/government/publications/statement-of-changes-to-the-immigration-rules-hc-1534-11-october-2018 (last visited 9 January 2019). Note that the new system was scheduled to begin on 5 November 2018 but is now to be rolled out on a phased basis from November 2018. See also https://www.ukvcas.co.uk/home-internal (last visited 11 January 2019).

200 https://www.gov.uk/guidance/ukvis-new-front-end-services-what-you-need-to-know (last visited 11 January 2019)

and Immigration Operational guidance.[201] Generally, online and hard copy forms must be accessed either by following through the relevant links to get to the relevant information page on Gov.uk relating to the specific immigration category and type of application, or by using the search engine on Gov.uk.

4.41 We have also heard criticism of the online application process as it has operated before the introduction of the new UKVCAS system. The applicant (or their representative) cannot see what questions are asked and information is not given on the form until they have completed the relevant registration process and started to fill it in. It is also usually not possible to proceed to the next page without completing the current page.

4.42 It is likely that the online application processes will become more streamlined in the future, and the use of techniques such as data analysis and insights will lead to more customer-friendly online processes. This might include, to an even greater extent than currently, pointing applicants to the Rules, or to supplementary external material such as guidance, while the online application is in process.

4.43 The November 2018 guidance introducing the UKVCAS system states that "customers will be intuitively led through an online application process making it clear what they need to do, what supporting evidence they will need and where they will need to go to complete their application."[202]

4.44 In the longer term, more flexible systems may emerge to assist decision-making by immigration officials, or even to pre-empt defective applications at the submission stage to provide a timely alert to the applicant as to what they must do to submit an application correctly. The Rules will need to be drafted with a view to standing as the technical foundation upon which a digital immigration control system is based.

4.45 We would welcome views on the accessibility of application forms, and whether this could be improved.

Consultation Question 9.

4.46 To what extent are application forms accessible? Could the process of application be improved?

201 See https://www.gov.uk/government/collections/uk-visa-forms (last visited 9 January 2019).

202 https://www.gov.uk/guidance/ukvis-new-front-end-services-what-you-need-to-know (last visited 10 December 2018)

Chapter 5: Recent drivers of length and complexity in the Immigration Rules

5.1 The Immigration Rules have progressively grown in length since they were introduced. In his judgment in *R (Alvi) v Secretary of State for the Home Department* Lord Hope noted that they had more than doubled in length, from under 40 pages to 80 pages between 1973 and 1994 and had reached nearly 500 pages by the time the Supreme Court heard the *Alvi* case in 2012.[203] Our research, described in this chapter, indicates that the Rules have almost quadrupled in length, from under 300 pages to around 1,100, in the ten years since early 2008; we examine the reasons for that increase.

THE EARLY FORM OF THE RULES

5.2 After the enactment of the Immigration Act 1971, the Rules originally operated in large part as a document which structured and controlled the decisions of the Secretary of State and immigration officers made under the Act. They were a formal description of the policy which the Home Office operated as to the practice to be followed in the administration of that Act, often outlining substantive requirements governing entry and leave to remain. The Rules also often contained non-exhaustive illustrations of how these requirements should be satisfied. For example, in relation to 'businessmen and self-employed persons':

> Permission will depend on a number of factors, including evidence that the applicant will be devoting assets of his own to the business, proportional to his interest in it, that he will be able to bear his share of any liabilities the business may incur, and that his share of its profits will be sufficient to support him and any dependants. The applicant's part in the business must not amount to disguised employment, and it must be clear that he will not have to supplement his business activities by employment for which a work permit is required. Where the applicant intends to join an existing business, audited accounts should be produced to establish its financial position, together with a written statement of the terms on which he is to enter into it; evidence should be sought that he will be actively concerned with its running and that there is a genuine need for his services and investment.[204]

5.3 Under this system, there was a place for discretion, particularly as to what evidence was sufficient to show compliance with a Rule. The Rules could therefore properly be supplemented by guidance and/or operational instructions to caseworkers. The synergy between the Rules and guidance or instructions was self-evident and legitimate.[205]

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203 *R (Alvi) v Secretary of State for the Home Department* [2012] UKSC 33, [2012] 1 WLR 2208 at [110].

204 See *R (Alvi) v Secretary of State for the Home Department* [2012] UKSC 33, [2012] 1 WLR 2208 at [116] by Lord Walker discussing one of the earliest statements of the Rules in 1973. Some elements of the approach in the older Rules still survive.

205 See *R (Alvi) v Secretary of State for the Home Department* [2012] UKSC 33, [2012] 1 WLR 2208 at [117] by Lord Walker. It is not suggested that there was no argument about what provisions could legitimately be left

THE MOVE TO A DETAILED PRESCRIPTIVE APPROACH TO THE RULES

5.4 The introduction of the points-based system with effect from November 2008 signalled a major change in approach. As noted in chapter 2, a key policy aim behind the introduction of the points-based system was the introduction of "a more efficient, transparent and objective application process" which would result in more certainty for the majority of applicants. Through a series of statements of changes, the Rules became more detailed and prescriptive, tending to mandate a refusal of leave to enter or remain if an applicant did not meet precise requirements. This approach necessarily meant that the Rules grew longer, and in some places more complex.[206] An example of this, paragraph 50 of Appendix A, is set out in the next section.

5.5 The introduction of the points-based system was thus accompanied by a move to presenting the Rules as a comprehensive statement of detailed criteria for granting leave to enter or remain. However, the task of laying down a code governing the administration of immigration control which is both complete and prescriptive is far from straightforward.

THE DISCRETIONARY AND PRESCRIPTIVE APPROACHES CONTRASTED

5.6 An illustration of how drastic this change of approach can be is provided by contrasting the Tier 1 (Entrepreneur) Route with its equivalent under the pre points-based system, the Business Person category.

5.7 The current Tier 1 (Entrepreneur) Rules found in Part 6A and Appendix A amount to 11,702 words (approximately 4500 of which cover evidential matters, in the form of specified evidence). The Business Person Rules, found in Part 6 prior to their replacement in 2008, amounted to 2058 words, which were supplemented by eight pages of guidance.[207]

5.8 While there are several substantive policy differences between the Business Person route and Tier 1 (Entrepreneur),[208] the key principles of the routes are the same: to allow a non-EEA national to invest £200,000 in order to set up or join an existing UK business (which is viable and genuine), and to create employment for two settled workers.

5.9 An example of the contrast between the two approaches is provided by the requirements in the respective sets of Rules for obtaining an extension of stay within the category. Paragraph 206 of the Business Person Rules formerly set out the

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to guidance: see, for example, I A Macdonald and F Webber, *Macdonald's Immigration Law and Practice* (6th ed 2005) at para 1.53, referring to the policy to grant refugees indefinite leave to remain immediately.

206 See graphs at paras 5.31 and 5.33 below.

207 See Annexes A to D; http://webarchive.nationalarchives.gov.uk/20080609150132/http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/IDIs/idischapter6annexes/ (last visited 22 June 2018).

208 For example, the Tier 1 (Entrepreneur) route allows for less investment capital in some circumstances, faster progression to settled status where higher capital is invested and more jobs are created, and the ability to move between businesses without obtaining permission from the Home Office. There is also provision in Tier 1 (Entrepreneur) for 'entrepreneurial teams', whereby two applicants may claim points for the same investment, available funds, jobs created and business activity as long as certain requirements are met.

requirements for an extension of stay in order to remain in business in the UK. These included a requirement that the applicant "can show":

(a) that where he has established a new business, new full time paid employment has been created in the business for at least two persons settled in the United Kingdom; or

(b) that where he has taken over or joined an existing business, his services and investment have resulted in a net increase in the employment provided by the business to persons settled here to the extent of creating at least two new full time jobs.[209]

5.10 The equivalent category under the points-based system, Tier 1 (Entrepreneur), retains the job creation requirement for the extension of stay stage, but has additional substantive requirements and also prescribes the relevant evidentiary requirements. Paragraph 50 in Appendix A (Attributes) states:

[209] See para 206(viii) of the Immigration Rules as at 29 June 2008. See Appendix F (Archived Rules), https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-f-archived-immigration-rules (last visited 6 July 2018).

50. If the applicant is required to score points for job creation in Table 5 or Table 6, they must provide all of the following specified documents:

(a) printouts of Real Time Full Payment Submissions showing that the applicant complied with Pay As You Earn (PAYE) reporting requirements to HM Revenue & Customs in respect of each relevant settled worker as legally required, and has done so for the full period of employment used to claim points. These must show every payment made to each settled worker as well as any deductions;

(b) duplicate payslips or wage slips for each settled worker used to claim points, covering the full period(s) of the employment for which points are being claimed;

(c) confirmation of the employment start date, hours paid per pay period and the hourly rate for each settled worker relied upon, including any changes to the same and the dates of those changes;

(d) copies of any of the following documents which demonstrate that each employee has settled status in the UK:

(i) the biometric data page of a British or EEA passport, showing the photograph and personal details of the employee,

(ii) a birth certificate, showing the employee was born in the UK and Colonies before 1 January 1983,

(iii) if the employee was born in the UK on or after 1 January 1983, a birth certificate, together with documentation, such as a passport or naturalisation certificate, which confirms one of their parents had settled status in the UK when the employee was born, and additionally, if the parent is the employee's father, a marriage certificate to the mother,

(iv) if the employee is an EEA national, a UK registration certificate/permanent residence document,

(v) if the employee is the spouse of an EEA national, the biometric data page of their passport, showing their photograph and personal details, or a residence card, and any of the documents in (i) or (iv) above which relate to the EEA national, together with their marriage certificate to the EEA national, or

(vi) if the worker is an overseas national with settled status in the UK, the biometric data page of their passport containing their photograph and personal details, and the pages where a UK Government stamp or an endorsement appear, or a biometrics residence permit, or official documentation from the Home Office which confirms their settled status in the UK;

(e) if the applicant was self-employed at the time a settled worker was employed by their business, the specified documents in paragraph 48(a) above showing the dates that the applicant became registered with HM Revenue & Customs as self-

employed, with the bank statements referred to in 48(a)(iii) showing all the payments made to the settled worker in the full period of employment used to claim points, and the address of the business;

(f) if the applicant was a director of a UK company or member of a UK partnership at the time the settled worker was employed by their business, a printout from Companies House of the company's filing history page and of the applicant's personal appointments history, showing this;

(g) if the applicant took over or joined a business, they must provide an original signed and dated letter from an accountant, showing:

(i) the name and contact details of the business,

(ii) the applicant's status in the business,

(iii) the number of jobs created in the business and the hours paid in each of the jobs,

(iv) the start dates and end dates (where applicable) of the jobs relied upon,

(v) the registration or permission of the accountant to operate in the UK,

(vi) confirmation that the business did not employ any workers before the applicant took over or joined it, if relevant, and

(vii) confirmation that the accountant will verify the contents of the letter to the Home Office on request;

This applies regardless of how long the business existed for before the applicant took over or joined it;

(h) if the business referred to in (g) employed workers before the applicant took over or joined it, they must also provide the following documents for the year immediately before the applicant joined the business and the years that the jobs were created, showing the net increase in employment and signed and dated by the applicant:

(i) duplicate Real Time Full Payment Submissions sent to HM Revenue & Customs, or

(ii) if the business started employing settled workers for whom points are being claimed, before reporting under Real Time, a form P35…..

5.11 A striking example of the nature and extent of prescription now present in the points-based system rules is that while paragraph 206 used to simply require that the new employees had to be "settled" in the UK; paragraph 50(d) has more than 20 lines of text on the evidence that must be shown to prove this.

THE BALANCE BETWEEN THE RULES AND GUIDANCE: THE EFFECT OF *PANKINA* AND *ALVI*

5.12 Following the introduction of the points-based system in 2008 the Rules continued, in many areas, to be supplemented by external material which was referred to in a rule. The content of that external material might change from time to time, which meant the substance of it may not be available to Parliament at the time that a particular rule was scrutinised.

5.13 As we have discussed in paragraph 3.25 above, on 23 June 2010 the Court of Appeal held in *Pankina*[210] that an application could not be refused on the grounds of not satisfying additional requirements contained in guidance.

5.14 One month later, on 22 July 2010, the Minister for Immigration, Damian Green MP, responded in a Ministerial statement, stating that:

> The immigration rules specify that the detail of how certain requirements will be applied will be set out in UK Border Agency guidance rather than in the immigration rules themselves. This is essential best practice as it enables the UK Border Agency to have the flexibility it needs to make minor changes while staying within the framework set out in the immigration rules.
>
> However, on two particular points successful legal challenges have been brought to the extent to which requirements must be set out in the immigration rules rather than in UK Border Agency guidance. The first is the minimum levels of courses that may be studied under Tier 4 (general) [students].[211] The second is the periods of time that applicants must have held available funds for.[212]
>
> In the light of the court judgments I am bringing the detail of these requirements within the immigration rules. The requirements themselves are not changing, although in the case of English language courses, I am using this as an opportunity to reintroduce the minimum level for such courses which was in place before the judgment was handed down. By doing this, if the requirements do change in future, those changes will need to be laid before Parliament.[213]

5.15 On 21 December 2010 HC 698 was laid in Parliament. This statement of changes also brought other external material into the Rules, concerning limits on the number of applicants for entry clearance under Tier 1 and the number of sponsor certificates under Tier 2. This was in response to *R (Joint Council for the Welfare of Immigrants) v Secretary of State for the Home Department* which held that these "interim limits" were

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210 *Secretary of State for the Home Department v Pankina* [2010] EWCA Civ 719, [2010] 3 WLR 1526.

211 *R (English UK Ltd) v Secretary of State for the Home Department* [2010] EWHC 1726 (Admin).

212 *Secretary of State for the Home Department v Pankina* [2010] EWCA Civ 719, [2010] 3 WLR 1526.

213 Written Ministerial Statements, *Hansard*, 22 July 2010, col 41WS. The following statements of changes were introduced in response to these judgments: HC 96, 15 July 2010, HC 382, 22 July 2010 and Cm 7929, 19 August 2010 (which made corrections to the 22 July changes).

not legally effective while in guidance.[214] On 16 March 2011 more material was transferred into the Rules to comply with *Pankina*.[215]

5.16 The practice of the senior courts formally invalidating guidance, which would then be transferred into the Rules, culminated in the Supreme Court decision in *Alvi* (18 July 2012), which is discussed in chapter 3. It is sufficient to note here that the Supreme Court held that the Secretary of State could not lawfully refuse an application based on non-compliance by an applicant with a requirement which was set out in extrinsic material rather than in the Rules.

5.17 As a consequence of the *Alvi* decision, a significant amount of material previously contained in external materials was immediately moved to the Rules. On 19 July 2012, the day after the decision in *Alvi*, some 300 pages were added to the Rules through statement of changes to the Immigration Rules CM8423:

(1) Appendix FM-SE (Family members – specified evidence) (16 pages);

(2) Appendix J (Codes of practice for skilled work) (115 pages);

(3) Appendix K (Shortage occupation list) (22 pages);

(4) Appendix L (Tier 1 competent body criteria) (6 pages);

(5) Appendix M (Sports governing bodies) (3 pages);

(6) Appendix N (Authorised exchange schemes) (29 pages);

(7) Appendix O (Approved English language tests) (10 pages); and

(8) Appendix P (Lists of financial institutions) (86 pages).[216]

5.18 The way that Appendix FM (Family members) was drafted may also have been intended to pre-empt the challenge in *Alvi*. Appendix FM was introduced on 9 July 2012.[217]

5.19 In the six months following *Alvi*, four statements of changes were made, albeit that the number of additional pages was not great. This is a slightly higher rate of amendment

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214 *R (Joint Council for the Welfare of Immigrants) v Secretary of State for the Home Department* [2010] EWCA Civ 3524 at [47] by Sullivan LJ.

215 See HC 863, Explanatory Memorandum.

216 Totalling 287 pages. Page count taken from the Rules as archived on the Gov.uk website, "Archive of Immigration Rules valid between 9 July to 19 July 2012". Note that there appears to be an error with this date. The Appendices listed at para 5.17 are included in the Gov.uk archived Rules valid between 9 July to 19 July; these Appendices were in fact included in the Rules on 20 July 2012 by statement of changes CM8423.

217 Statement of changes to the Immigration Rules: HC194. Appendix FM totalled 20 pages as archived on the Gov.uk website, "Archive of Immigration Rules valid between 9 July to 19 July 2012".

than is typical (see our graph at paragraph 5.34).[218] These statements made the following changes to the Rules:

(1) On 5 September 2012, HC 565 introduced:

(a) Appendix 7 (Statement of Written Terms and Conditions of employment required in paragraph 159A (v) and paragraph 159D (iv)) which added two pages to the Rules;[219]

(b) Appendix Q (Statement of Written Terms and Conditions of employment required in paragraph 245ZO(f)(ii) and paragraph 245 ZQ (e)(ii)) which added two pages to the Rules;[220]

(c) Appendix R (List of recognised festivals for which entry by amateur and professional entertainer visitors is permitted) which added two pages to the Rules;[221] and

(d) Appendix T (Tuberculosis screening) which added nine pages to the Rules.[222]

(2) HC 565 also amended the transitional provisions in Part 8 (Family members) and Appendix FM and FM-SE (Family members – specified evidence). However, in the Explanatory Memorandum, the Secretary of State explained that changes to family provisions were not related to *Alvi* but rather to "ensure the Rules deliver the original policy intention".

(3) On 22 November 2012, HC 760 changed rules relating to the points-based system and Appendix FM (Family members).

(4) HC 820 (12 December 2012) brought forward the implementation date for certain provisions in HC 760.

(5) Finally, on 20 December 2012, HC 847 added a list of tuberculosis screening clinics to Appendix T (Tuberculosis screening).

5.20 Other Appendices which were added to the Rules between 2012 and 2018, though not as a direct consequence of *Alvi*, include:

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218 Note, however, in the first six months of 2013 there were seven changes to the Rules.

219 Note that this Appendix is no longer in force. Page count taken from the Rules as archived on the Gov.uk website, "Archive of Immigration Rules valid between 1 October to 12 December 2012".

220 Note that this Appendix is no longer in force. Page count taken from the Rules as archived on the Gov.uk website, "Archive of Immigration Rules valid between 6 September [2012] to 30 September 2012".

221 Note that this Appendix is no longer in force. Page count taken from the Rules as archived on the Gov.uk website, "Archive of Immigration Rules valid between 6 September [2012] to 30 September 2012".

222 HC 565, 5 September 2012. Page count taken from the Rules as archived on the Gov.uk website, "Archive of Immigration Rules valid between 1 October to 12 December 2012".

(1) Appendix Armed Forces which added 33 pages to the Rules;[223]

(2) Appendix AR (Administrative review) which added four pages to the Rules;[224]

(3) Appendix V (Visitors) which added 31 pages to the Rules, while removing 24;[225] and

(4) Appendix SN (Service of notices) which added three pages to the Rules.[226]

5.21 The consequence of *Alvi* – that it would lead to a tendency to include in the Rules material which was previously external to them – was foreseen by Lord Hope. Referring to his disagreement with the other Supreme Court judges as to where the line needed to be drawn between Rules and external material,[227] he observed that:

> [the fact of this disagreement] may serve as a warning that the wiser course is to assume that everything that is contained in a rule-making document such as that which is before us in this case is caught by the requirement that section 3(2) sets out, and that any changes to any of the material that it contains must be laid before Parliament.[228]

5.22 As our graphs at paragraphs 5.30 show, there was indeed a significant increase in the volume of the Rules following the decision in *Alvi*. This was largely a result of a transfer of previously external material into the Rules. This reduced the risk that immigration decisions taken on the basis of external material on how to allocate points to applicants would be invalidated on the ground that the requirements in question must be contained in the Rules.

5.23 The effect of the *Alvi* decision would have been more pronounced had the Supreme Court not, in 2013, determined that external material could legitimately contain detailed requirements not for applicants themselves but for sponsors.[229]

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223 HC 803, 8 November 2013. Page count taken from the Rules as archived on the Gov.uk website, "Archive of Immigration Rules valid between 30 November to 29 December 2013".

224 HC 693, 16 October 2014. Page count taken from the Rules as archived on the Gov.uk website, "Archive of Immigration Rules valid between 20 October to 5 November 2014".

225 HC 1025, 26 February 2015. Page count taken from the Rules as archived on the Gov.uk website, "Archive of Immigration Rules valid between 24 April 2015 to 13 July 2015". HC 1025 also removed the majority of Part 2, which was the location for the previous visitors Rules.

226 HC 877, 11 March 2016. Page count taken from the Rules as archived on the Gov.uk website, "Archive of Immigration Rules valid between 6 April 2016 to 18 May 2016".

227 See paras [3.32] to [3.34].

228 *R (Alvi) v Secretary of State for the Home Department* [2012] UKSC 33, [2012] 1 WLR 2208 at [64] by Lord Hope. Lord Dyson also addressed the prospect of the Secretary of State having "to make the most detailed rules and lay them before Parliament", but did not think that unduly burdensome or administratively unworkable.

229 *R (New London College Limited) v Secretary of State for the Home Department* [2013] UKSC 51, [2013] 1 WLR 2358. This decision is discussed in Chapter 3.

5.24 The list of approved screening clinics was also removed from Appendix T (Tuberculosis screening) in July 2015.[230] Before that, the list of clinics occupied 29 pages of the Rules. Appendix T now simply states that an applicant must present:

> a valid medical certificate issued by a medical practitioner approved by the Secretary of State for these purposes, as listed on the Gov.uk website, confirming that they have undergone screening for active pulmonary tuberculosis and that such tuberculosis is not present in the applicant.

INCORPORATION OF ARTICLE 8 INTO THE IMMIGRATION RULES

5.25 A further factor affecting the complexity of the Rules from July 2012 was the decision to incorporate the assessment of applications made under Article 8 of the European Convention on Human Rights into the Immigration Rules (see chapter 2).

5.26 This development coincided with the *Alvi* decision and was accompanied by very specific provision as to how the requirements expressed in the Rules should be met.[231]

5.27 In introducing the statement of changes to the Rules which came into effect on 9 July 2012, the government announced that the new Rules would "reflect fully the factors which can weigh for or against an Article 8 claim". The government also stated that they would "reflect the views of the Government and Parliament as to how Article 8 should, as a matter of public policy, be qualified in the public interest in order to safeguard the economic well-being of the UK."[232]

ANALYSIS

5.28 Our project aims to determine the causes of underlying complexity in the Rules in order to provide workable proposals for simplification. In our provisional view, the introduction of the points-based system and policy changes in relation to Article 8, combined with the effect of the Supreme Court's decision in *Alvi* have made the Rules longer, more complex and, in consequence, harder to administer.

5.29 The following graphs seek to illustrate some of these points. The first three graphs show the growth in length of the Rules, and the fourth depicts the frequency of the statements of changes to the Rules and their respective length.

5.30 Graph 1 demonstrates how the Rules' volume increased between 2008 and January 2018:

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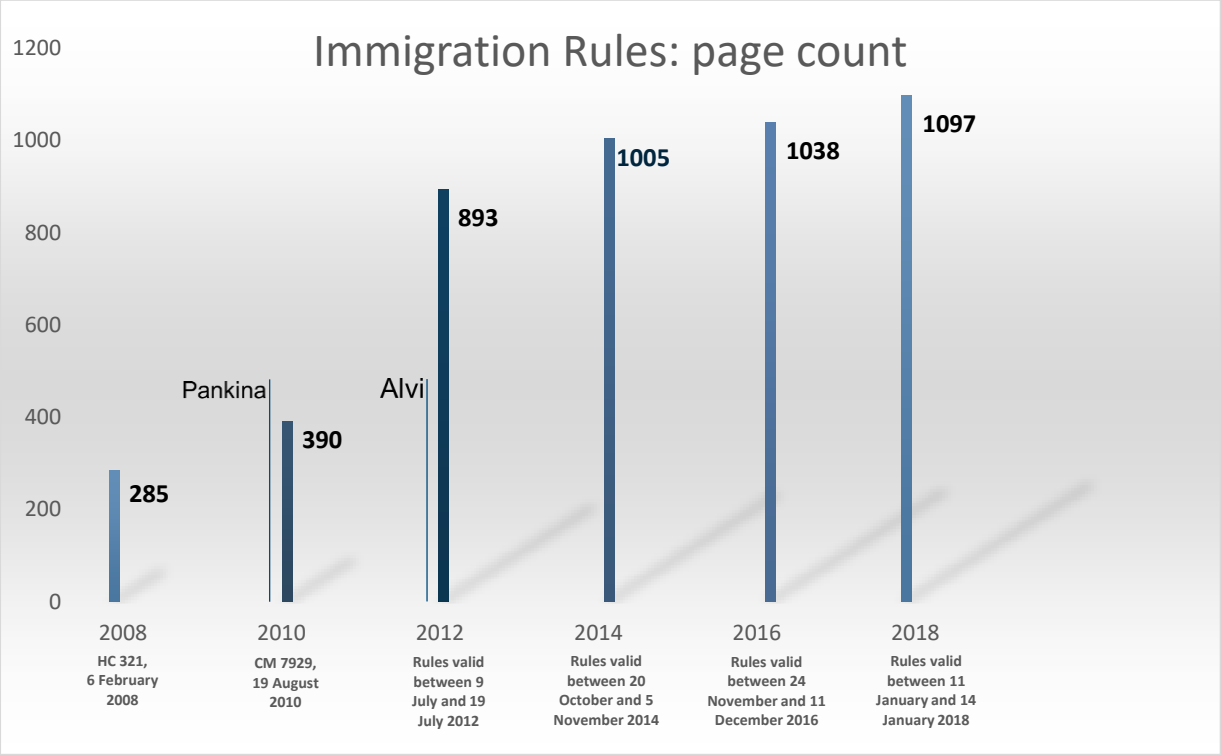
230 HC 297, 13 July 2015.

231 See Appendix FM, Appendix FM-SE, and paragraph 276ADE of the Immigration Rules discussed in chapter 2.

232 https://www.gov.uk/government/publications/family-migration-statement-of-intent (last visited 9 January 2019).

5.31 Graph 1[233]

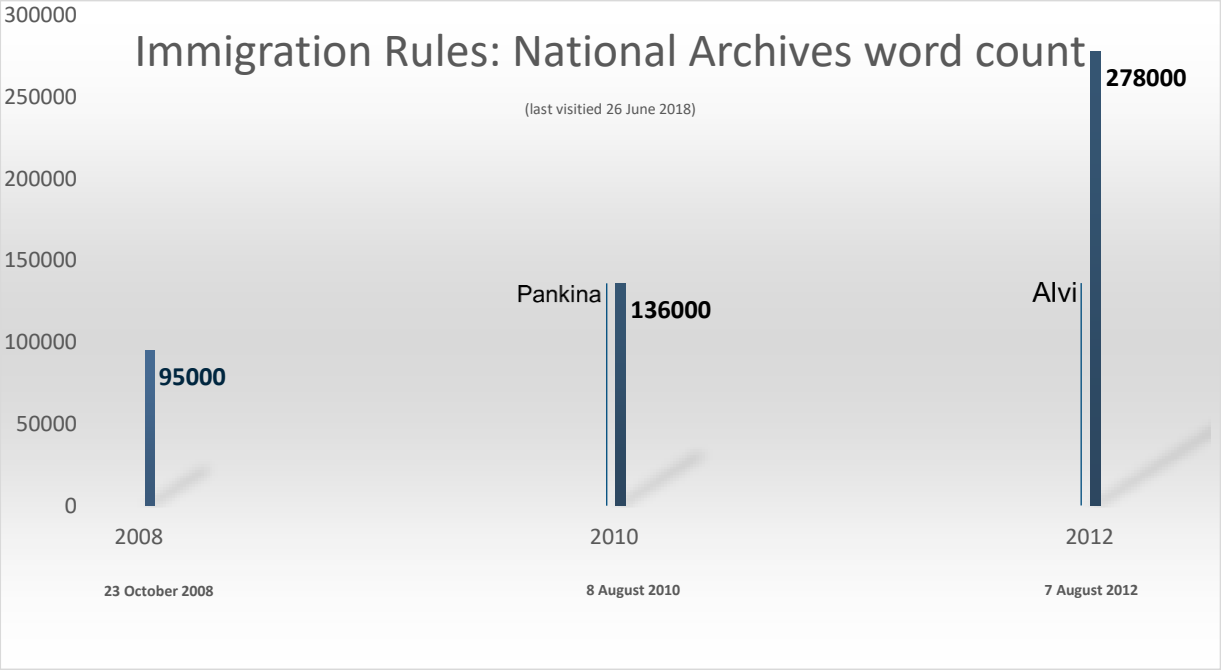


Further graphs

5.32 In order to cross-check the accuracy of the 2008-2012 figures for graph 1, graph 2 below shows word counts of the Rules taken from snapshots of the UK Border Agency website accessed via the National Archives website for 2008 to 2012:

[233] Graph 1 combines page counts from Gov.uk and from I A Macdonald and R Toal, *Macdonald's Immigration Law and Practice* because Gov.uk does not archive the Rules pre-2012. To obtain figures for 2008 and 2010 we calculated the ratio between the 2014 and 2016 versions of *Macdonald's* and the Rules on Gov.uk. The Rules are about 23% longer in the Gov.uk format. The 2012 to 2018 figures are based on the Gov.uk archived Rules. The page counts for the years 2008 and 2010 are taken from the respective editions of *Macdonald's* published in these years (adjusted by 23%). The statements of changes referred to in the graph under those years are the latest statement of changes referred to in each edition.

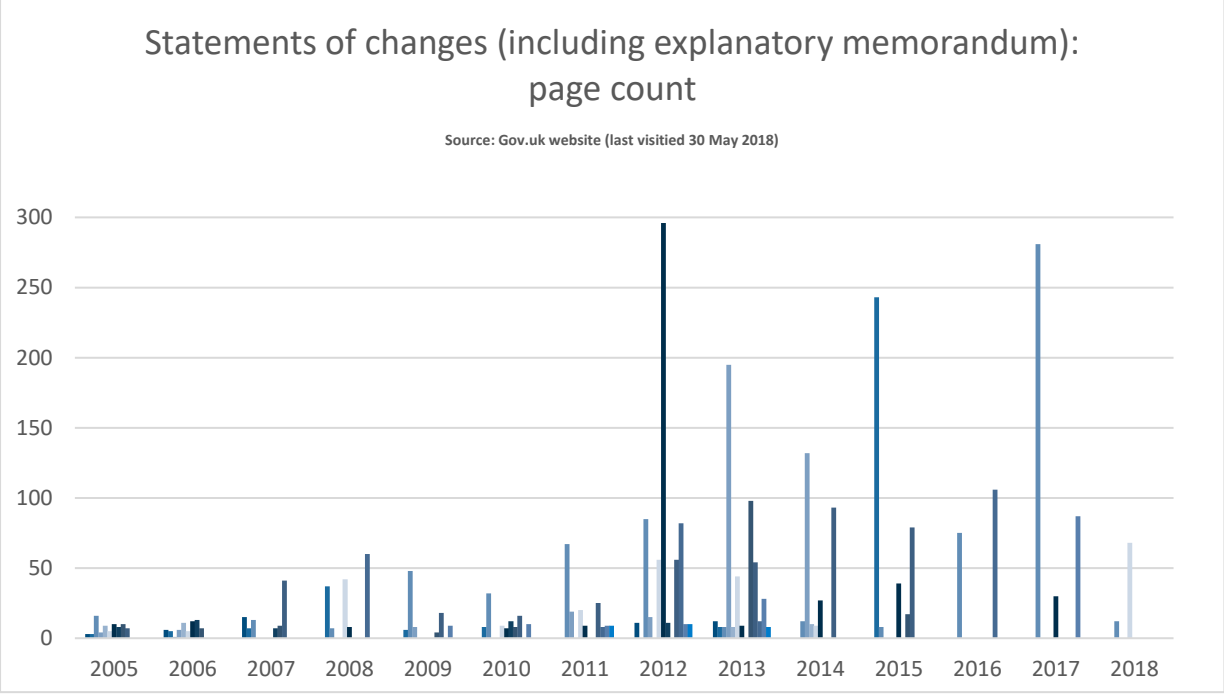
5.33 Graph 2[234]



The frequency of the statements of changes

5.34 Graph 3 details the page count and frequency of the statements of changes to the Rules between 2005 and May 2018:

5.35 Graph 3



234 Word counts are rounded to the nearest 1000 words.

Discussion

5.36 Graphs 1 and 2 show that the Rules' length increased dramatically between 2010 and 2012. This suggests that the court decisions in this period,[235] in particular *Alvi*, have shaped the Rules' current size.

5.37 Of course, increased volume is not in itself necessarily a cause of complexity in the Rules. An increase in volume is unlikely, in and of itself, to explain why the Rules have become so complicated. The large amount of external guidance which has been incorporated into the Rules as a result of *Alvi* is sometimes self-contained. Freestanding material increases the length of the Rules while not necessarily making them more complex. But the degree of prescription and detail in the Rules inevitably makes them more complex and the way in which external material has been grafted onto the Rules has also made them more complicated. This is particularly apparent with regard to Appendix FM (Family members) and Appendix FM-SE (Family members – specified evidence), discussed in chapters 7 to 10.

5.38 Between 2013 and 2018, the most significant changes made to the Rules in terms of volume have been to the Appendices which were added in response to *Alvi*. The sizes of HC 1039,[236] HC 1138,[237] HC 693,[238] HC 1025[239] and HC 1078[240] were substantially due to amending Appendix J (Codes of practice for skilled work), Appendix K (Shortage occupation list) and Appendix L (Tier 1 competent body criteria). Pre-*Alvi*, these Appendices had been in external guidance.

5.39 We also consider it likely that the increase in the volume and frequency of the statements of changes has contributed to the complexity of the Rules. Coordinating rule changes is operationally complicated. Statements of changes receive input from Home Office Legal Advisers and are cleared by a senior civil servant. Collective government approval may also be required before a statement of changes is laid in Parliament. Compiling statements of changes is time-consuming. As a result, officials at the Home Office may have less time to engage in redrafting and simplifying the Rules. It is also difficult to coordinate changes in the Rules with amendments to the accompanying guidance to ensure that the tiers are consistent.

5.40 However, as shown by graph 3 above, the frequency of changes to the Rules has decreased since 2015/2016. We have been informed that this more recent practice of implementing larger statements of changes less frequently has resulted from a change in approach by the Home Office, in order to make change more manageable for caseworkers and practitioners.

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235 See chapter 3.

236 14 March 2013.

237 13 March 2014.

238 16 October 2014.

239 26 February 2015.

240 16 March 2017.

5.41 The next section of this chapter takes the example of Appendix FM to illustrate how the prescriptive approach can itself generate further complexity.

Statement of changes amending Appendix FM-SE

5.42 Appendix FM-SE (Family members – specified evidence), brought into the Rules on 19 July 2012 (the day after *Alvi* was decided) aims to provide a complete code of evidential requirements. The requirements are complicated. The Appendix has been regularly amended because the stated requirements did not reflect the Government's policy intention. We have also been informed that immigration practitioners have on occasions contacted the Home Office where the Rules did not appear to be functioning as intended, for example, when their clients had not satisfied the stated financial requirements, but nevertheless had genuine sources of income. The Home Office sometimes acknowledged that there was a lacuna in the Rules, and amended them. The Appendix initially ran to 15 pages; it is now 23 pages. In this respect, the prescriptive approach has itself been a driver of increasing length of and complexity in the Rules.

5.43 In this section, we set out some examples of changes to Appendix FM-SE. There are a raft of minor amendments, additions to the types of evidence that the Home Office will accept and the types of income that will count. These go to the level of detail of covering tips and gratuities paid via a "tronc" scheme. The content and extent of these ongoing changes are a good illustration of the problems of this approach, which we discuss below.

5 September 2012, HC 565

- Permitted the taking into account of third party support to the applicant in the form of "a maintenance grant or stipend associated with undergraduate study or postgraduate study or research".[241]

- Allowed competition winnings and a legacy which has been paid to contribute towards cash savings.[242]

14 March 2013, HC 1039

- Permitted cash income on which the correct tax has been paid to be counted as income, subject to the relevant evidential requirements.[243]

- To ensure the Rules were complete, the Secretary of State amended the evidential requirements for income from self-employment in a limited company.[244]

10 June 2013, HC 244

- Changed the required evidence of satisfying the financial requirements. Official documentation from government departments – other than the Department for

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241 Para 1b(iv).

242 Para 11A.

243 Para 1(1)(m).

244 Para 9 was substituted.

Work and Pensions – could now be used to evidence income received under the Basic State Pension and the Additional or Second State Pension.[245]

6 September 2013, HC 628

- Enabled cash savings acquired due to the sale of a dwelling, other building or land to be relied upon in certain circumstances where the sale took place within the period of six months before the date of application.[246]

- Allowed a subcontractor under the Construction Industry Scheme to have their income treated as income from salaried employment.[247]

- Clarified that overtime, commission-based pay and bonuses would be counted as income where received in the relevant period(s) relied upon in the application.[248]

13 March 2014, HC 1138

- Allowed tips and gratuities paid via a "tronc" scheme registered with HM Revenue & Customs would count as employment income (as bonuses) (tronc schemes are used by hospitality businesses to distribute tips and gratuities to employees in a tax-efficient way).[249]

16 October 2014, HC 693

- the restrictions on permitted earnings from the applicant that can be counted in relation to leave to remain applications, that previously applied to employed earnings, were extended to earnings from self-employment.[250]

11 March 2016, HC 877

- The requirement to provide a certificate of confirmation of unaudited accounts from an accountant who is a member of a UK recognised supervisory body (as defined in the Companies Act 2006) was amended to include an accountant who is a member of the Institute of Financial Accountants.[251]

3 November 2016, HC 667

- Small changes were made to the evidential provisions relating to pensions to allow applicants to rely on Police Disability Pensions.[252]

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245 Para 10(e)(i)(1).

246 Para 11A(d).

247 Para 17A.

248 Para 18(b).

249 Para 18(b).

250 Para 1(c) amended.

251 Paras 7(h)(bb) and 9(b)(iv).

252 Para 12.

16 March 2017, HC 1078

- Permitted payments to cover travelling time to be counted as income where received in the relevant period.[253]

Amendments to sources of income and evidential requirements

5.44 Requirements to demonstrate reliable financial resources have been frequently amended. In the following text, we focus on paragraph 10 of Appendix FM-SE in its current form (based on the latest statement of changes, HC 1154).

5.45 The original text of the rule is in standard font. Each subsequent amendment is coded by reference to the year of the amendment. We highlight 2012 amendments in green; 2013 in pink; 2014 in purple; 2015 in orange; 2016 in red; and 2017 is "underscored".

5.46 In addition, we strike through text which has been substituted.

Paragraph 10, non-employment income

5.47 In respect of non-employment income all the following evidence, in relation to the form of income relied upon, must be provided:

(a) To evidence property rental income:

(i) Confirmation that the person or ~~the applicant's partner and/or the applicant the person or the person and their partner jointly~~[254] the person and their partner jointly own the property for which the rental income is received, through:

(1) ~~The title deeds of the property; or~~ A copy of the title deeds of the property or of the title register from the Land Registry (or overseas equivalent); or[255]

(2) A mortgage statement.

(ii) ~~Monthly~~[256] personal bank statements for or from[257] the 12-month period prior to the date of application showing the ~~rental income~~ income relied upon[258] was paid into an account in the name of the ~~applicant~~ person or of the person and their partner jointly.[259]

(iii) A rental agreement or contract.

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253 Para 18(b).

254 "the person or the person and their partner jointly" was inserted by HC 565, 5 September 2012.

255 Para 10(a)(i)(1) substituted by HC 760, 22 November 2012.

256 "Monthly" was deleted by HC 760, 22 November 2012.

257 HC 297, 13 July 2015 inserted "or from".

258 HC 1025, 26 February 2015 deleted "rental income" and inserted the orange text.

259 HC 1025, 26 February 2015 deleted "applicant" and inserted the orange text.

(b) To evidence dividends (except where paragraph 9 applies)[260] or other income from investments, stocks, shares, bonds or trust funds:

(i) A certificate showing proof of ownership and the amount(s) of any investment(s).

(ii) A portfolio report (for a financial institution regulated by ~~the Financial Services Authority~~ Financial Conduct Authority (and the Prudential Regulation Authority where applicable)[261] in the UK) or a dividend voucher showing the company and person's details with the person's net dividend amount ~~and tax credit~~.[262]

(iii) ~~Monthly~~[263] personal bank statements for or from[264] the 12-month period prior to the date of application showing that the income relied upon was paid into an account in the name of the person or of the person and their partner jointly.

(iv) Where the person is a director of a limited company based in the UK, evidence that the company is not of a type specified in paragraph 9(a). This can include the latest Annual Return filed at Companies House.[265]

(c) To evidence interest from savings:

(i) ~~Monthly~~[266] personal bank statements for or from[267] the 12-month period prior to the date of application showing the amount of the savings held and that the interest was paid into an account in the name of the person or of the person and their partner jointly.

(d) To evidence maintenance payments (from a former partner of the applicant[268] to maintain their and the applicant's child or children or the applicant[269], or from a former partner of the applicant's partner to maintain the applicant's partner[270]):

(i) Evidence of a maintenance agreement through any of the following:

(1) A court order;

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260 "(except where paragraph 9 applies)" was inserted by HC 1039, 14 March 2013.

261 HC 244, 10 June 2013 substituted the pink text for "the Financial Services Authority".

262 HC 1039, 14 March 2013 inserted "or a dividend voucher showing the company and person's details with the person's net dividend amount and tax credit". HC 1154, 15 June 2018 deleted "and tax credit".

263 "Monthly" was deleted by HC 760, 22 November 2012.

264 HC 297, 13 July 2015 inserted "or from".

265 Para 10(b)(iv) was inserted by HC 1039, 14 March 2013.

266 "Monthly" was deleted by HC 760, 22 November 2012.

267 HC 297, 13 July 2015 inserted "or from".

268 "of the applicant" was inserted by HC 1138, 13 March 2014.

269 The green text was inserted by HC 565, 5 September 2012.

270 The purple text was inserted by HC 1138, 13 March 2014.

(2) Written voluntary agreement; or

(3) Child Support Agency documentation.

(ii) ~~Monthly~~[271] personal bank statements for or from[272] the 12-month period prior to the date of application showing the income relied upon was paid into an account in the name of the person or the person and their partner jointly.

(e) To evidence a pension:

(i) Official documentation from:

(1) ~~HMRC~~ The Department for Work and Pensions[273] (in respect of the Basic State Pension and the Additional or Second State Pension) or other government department or agency[274], including the Veterans Agency;[275]

(2) An overseas pension authority; or

(3) A pension company,

confirming pension entitlement and amount (and, where applicable, reflecting any funds withdrawn from the pension account or fund).[276]

(ii) At least one ~~monthly~~[277] personal bank statement in the 12-month period prior to the date of application[278] showing payment of the pension into the person's account.

(iii) For the purposes of sub-paragraph (i), War Disablement Pension, War Widow's/Widower's Pension and any other pension or equivalent payment for life made under the War Pensions Scheme, the Armed Forces Compensation Scheme or the Armed Forces Attributable Benefits Scheme may be treated as a pension, unless excluded under paragraph 21 of this Appendix.[279]

(f) To evidence UK Maternity Allowance, Bereavement Allowance, Bereavement Payment and Widowed Parent's Allowance:

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271 "Monthly" was deleted by HC 760, 22 November 2012.

272 HC 297, 13 July 2015 inserted "or from".

273 "HMRC" was deleted by HC 760, 22 November 2012 substituting "The Department for Work and Pensions".

274 "or other government department or agency" was inserted by HC 244, 10 June 2013.

275 HC 803, 8 November 2013 inserted "including the Veterans Agency".

276 HC 297, 13 July 2015 inserted the orange text.

277 HC 565, 5 September 2012 inserted "monthly". HC 760, 22 November 2012 then deleted "monthly".

278 The green text was inserted by HC 565, 5 September 2012.

279 Para 10(e)(iii) was inserted by HC 803, 8 November 2013.

(i) Department for Work and Pensions documentation confirming ~~the applicant's partner or the applicant~~ the person or their partner[280] is or was in receipt of the benefit in the 12-month period prior to the date of application.[281]

(ii) ~~Monthly~~[282] personal bank statements for or from[283] the 12-month period prior to the date of application showing the income was paid into the person's account.

(ff) Subject to paragraph 12, to evidence payments under the War Pensions Scheme, the Armed Forces Compensation Scheme or the Armed Forces Attributable Benefits Scheme which are not treated as a pension for the purposes of paragraph 10(e)(i):

(i) Veterans Agency or Department for Work and Pensions documentation in the form of an award notification letter confirming the person or their partner is or was in receipt of the payment at the date of application.

(ii) personal bank statements for or from[284] the 12-month period prior to the date of application showing the income was paid into the person's account.[285]

(g) To evidence a maintenance grant or stipend (not a loan) associated with undergraduate study or postgraduate study or research:

(i) Documentation from the body or company awarding the grant or stipend confirming that the person is currently in receipt of the grant or stipend or will be within 3 months of the date of application, confirming that the grant or stipend will be paid for a period of at least 12 months or for at least one full academic year[286] from the date of application or from the date on which payment of the grant or stipend will commence, and confirming the annual amount of the grant or stipend. Where the grant or stipend is or will be paid on a tax-free basis, the amount of the gross equivalent may be counted as income under this Appendix.[287]

(ii) ~~Monthly~~[288] personal bank statements for any part of the 12-month period prior to the date of the application during which the person has been in receipt

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280 The green text was inserted by HC 565, 5 September 2012.

281 The green text was inserted by HC 565, 5 September 2012.

282 "Monthly" was deleted by HC 760, 22 November 2012.

283 HC 297, 13 July 2015 inserted "or from".

284 HC 297, 13 July 2015 inserted "or from".

285 Para 10(ff)(i) and (ii) was inserted by HC 803, 8 November 2013.

286 "or for at least one full academic year" was inserted by HC 693, 16 October 2014.

287 The pink text was inserted by HC 1039, 14 March 2013.

288 "Monthly" was deleted by HC 760, 22 November 2012.

of the grant or stipend showing the income was paid into the person's account.[289]

(h) To evidence ongoing insurance payments (such as, but not exclusively, payments received under an income protection policy):

(i) documentation from the insurance company confirming:

(a) that in the 12 months prior to the date of application the person has been in receipt of insurance payments and the amount and frequency of the payments.

(b) the reason for the payments and their expected duration.

(c) that, provided any relevant terms and conditions continue to be met, the payment(s) will continue for at least the 12 months following the date of application.

(ii) personal bank statements for or from[290] the 12-month period prior to the date of application showing the insurance payments were paid into the person's account.

(i) To evidence ongoing payments (other than maintenance payments under paragraph 10(d)) arising from a structured legal settlement (such as, but not exclusively, one arising from settlement of a personal injury claim):

(i) documentation from a court or the person's legal representative confirming:

(a) that in the 12 months prior to the date of application the person has been in receipt of structured legal settlement payments and the amount and frequency of those payments.

(b) the reason for the payments and their expected duration.

(c) that the payment(s) will continue for at least the 12 months following the date of application.

(ii) personal bank statements for or from[291] the 12-month period prior to the date of application showing the payments were paid into the person's account, either directly or via the person's legal representative.[292]

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289 Para (g)(i) and (ii) was inserted by HC 565, 5 September 2012.

290 HC 297, 13 July 2015 inserted "or from".

291 HC 297, 13 July 2015 inserted "or from".

292 Para 10(h) and (i) was inserted by HC 1138, 13 March 2014.

OUR ANALYSIS OF THE CHANGES MADE TO APPENDIX FM-SE

5.48 There have been 15 statements of changes affecting Appendix FM-SE since it was introduced into the Rules in July 2012.[293] We have selected paragraph 10 as an example, examining the nature of the changes. Overall, they seem to fall into the following categories:

(1) resolving ambiguities, which may have been identified as a result of experience in practice;

(2) filling gaps in the prescription, which may also have been identified in practice; or

(3) keeping the Rules up to date, for example, amending references to Government departments.

5.49 However, the underlying policy behind Appendix FM-SE has remained largely unchanged. Applicants must show genuine financial means of supporting themselves, their family members, and any dependants. If an applicant in substance satisfies that policy, but does not satisfy the prescriptive requirements of FM-SE, the application will fall to be refused.[294] In due course, an amendment may be made to resolve an ambiguity or plug the gap.

5.50 This results in more complex rules, the detail of which frequently changes. The policy is to lay down, exhaustively and in detail, the evidentiary requirements for financial eligibility in Appendix FM-SE. Because only an omniscient drafter can anticipate every scenario which will occur in practice, and because facts on the ground change and evolve, this approach inevitably leads to frequent amendment of and addition to the Rules. Paragraph 10 of Appendix FM-SE seems to us to be a good example of one of the problems with the current Rules, which can be summarised as being that "detail begets detail".

5.51 This might suggest that, at least in the evidentiary context, the policy of "detailed and complete" prescription should make way for a different approach. That approach would refrain from prescribing a complete and detailed code of how financial eligibility might be evidenced. We will examine more closely how a less prescriptive approach to the Rules could operate in the next chapter of this paper.

5.52 Before we proceed to consider whether a less prescriptive approach could make the Rules simpler, we seek views on whether the analysis in this chapter of the role played by law and policy changes in generating increased length and complexity and length is correct. We also seek views on whether there are other parts of the Rules which are analogous to paragraph 10 of Appendix FM-SE, and whether there is any significant cause of complexity that we have missed.

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293 HC 565, HC 760, HC 1039, HC 244, HC 628, HC 803, HC 1138, HC 693, HC 1025, HC 297, HC 535, HC 877, HC 667, HC 1078 and HC 290.

294 Unless accepted "outside the Rules".

Consultation Question 10.

5.53 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.

Consultation Question 11.

5.54 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.

Consultation Question 12.

5.55 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.

Chapter 6: A less prescriptive approach to the Immigration Rules?

INTRODUCTION

6.1 We noted in chapter 5 that a major reason for the increased length and complexity of the Immigration Rules is the interaction between Home Office policy and the courts:

(1) The introduction of the points-based system saw immigration policy expressed through detailed and prescriptive Rules whose mandatory requirements left little or no room for discretion and flexibility, amounting instead to additional criteria to be met by applicants for leave; and

(2) Case-law culminating in *Alvi* has meant that such requirements must be contained within the Rules, rather than in other material such as guidance, which is not subject to Parliamentary scrutiny.[295]

6.2 A natural consequence of this has been that a significant amount of external material was transferred to the Rules, often within a short timeframe.

A less prescriptive alternative to the Rules?

6.3 This chapter will consider an alternative approach. One way to reduce the complexity of the Rules is to make them less detailed and comprehensive. This involves an element of restraint in rule-making in favour of a less prescriptive approach so that Rules, in appropriate places:

(1) are expressed in more general terms where they are currently very specific;

(2) are flexible where they are currently rigid; and/or

(3) set out or structure exercises of discretion about criteria for leave where they are currently mandatory.

6.4 Where a less prescriptive approach to the content of the Rules is desirable, they can be supplemented by non-exhaustive or illustrative guidance which is not mandatory in its terms. We consider this approach to be in line with the decision in *Alvi*.[296]

6.5 To illustrate the way in which such an alternative might reduce complexity, we focus on one category of the points-based system which contains a large number of prescriptive requirements: Tier 1 (Entrepreneur). We compare it with:

(1) the pre-2008 version of the Rules;

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295 We discuss the *Alvi* decision in chapters 3 and 5.

296 *R (Alvi) v Secretary of State for the Home Department* [2012] UKSC 33 at [118].

(2) the broadly equivalent Rules in New Zealand; and

(3) other parts of the current rules, Appendix V and Appendix EU, which are less prescriptive.

6.6 We also consider in this chapter the possible practical consequences of a less prescriptive approach, stressing that there are disadvantages as well as advantages in a less prescriptive approach to the content of the Rules.

Immigration policy a matter for the Home Office

6.7 A decision to move to a less prescriptive approach to the Rules, and in which parts, is a matter of policy. As we noted in chapter 1, the terms of reference for this project do not extend to deciding the underlying immigration policy behind the Rules. Only the Secretary of State can determine the Home Office's immigration policy.

6.8 This chapter is intended to stimulate discussion about ways in which the underlying immigration policy might be more simply executed by departing from the paradigm of detailed and comprehensive prescription in the Rules in favour of a less prescriptive approach. Even if we cannot make formal recommendations on the issue, we anticipate that consultees' views will be of value to Home Office officials in considering the formulation of future Rules.

ADVANTAGES AND DISADVANTAGES OF A LESS PRESCRIPTIVE APPROACH

6.9 We must recognise that a choice of approach involves a trade-off between certainty and flexibility. We therefore turn first to the advantages and disadvantages of a less prescriptive approach.

6.10 In terms of possible benefits for the applicant, a less prescriptive system could enable caseworkers to use a more 'commonsense' and proportionate approach to decision-making, as well as introducing Rules that were shorter and simpler to navigate and understand. Under the current approach, applicants who clearly satisfy the underlying intention of the Rules may either fall to be refused on minor points of evidence, or be required to structure their affairs artificially or to obtain certain documents simply in order to meet Rules. Removing prescription could therefore be beneficial to applicants, including in terms of time and cost.

6.11 Benefits for the Home Office might include, for decision-makers, a higher level of job satisfaction in being entrusted with wider discretion.[297] They might also include a reduction of the costs and time of dealing with refusals where an applicant does meet the substantive requirements of the Rules, and of dealing with a challenge to the decision or with a successful re-application.[298] At the policy-making level, there may

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297 It is not the case in the current system that caseworkers will never exercise discretion. For example, in addition to the Secretary of State's residual discretion to grant leave outside the Immigration Rules, there are a number of areas where discretion is provided for within the Rules. Examples are the discretionary general grounds for refusal/suitability requirements found in Part 9, Appendix FM, Appendix V and Appendix Armed Forces; the "evidential flexibility" provisions found in Appendix FM and Part 6A; and the "genuineness tests" found in certain points-based system categories.

298 Where there is an entitlement to an administrative review of a refusal, the question will arise of whether the reviewing caseworker can re-exercise the original caseworker's discretion.

be less need for substantial Rules changes, unless there are more fundamental policy changes, although guidance may need to be updated more regularly.

6.12 This could also make it easier for legal advisers and applicants to stay up to date with changes to the Rules.

6.13 The possible negative consequences, for both the applicant and the Secretary of State, include a risk that a more discretionary approach might lack clarity, certainty, consistency and efficiency. One of the stated purposes of the points-based system was to introduce objectivity and transparency into decision-making. This can provide greater certainty, and may reduce the need for detailed guidance. Prescriptive rules simplify decision-making in cases which fall squarely within or outside them. As Lord Wilson observed in *Mandalia*:

> It may be …that, as intended, the system is not difficult for caseworkers to administer. Certainly they have to a substantial extent been relieved of obligations to consider whether to exercise discretions in the processing of applications.[299]

6.14 There is a risk that, at least initially, a discretionary system would lack this quality, although detailed but non-exhaustive guidance may work just as well in most instances. If guidance were to form an important part of such a system, we would highlight the potential issues which we have detailed in chapter 4. These include inconsistencies between the guidance and the Rules, inconsistencies between different forms of guidance, and guidance not being updated at the same time as the Rules, when the latter are amended.

6.15 There are other aspects of the immigration system which may make certainty a primary concern for applicants. One is the changes to the remedies that are now available in non-human rights cases. Since the implementation of the appeals provisions of the Immigration Act 2014, applications which are not human rights or humanitarian protection claims do not attract a right of appeal, and the relevant form of challenge is an administrative review. Administrative reviews are decided by the Home Office, rather than an independent Tribunal, and are subject to a number of restrictions, including in relation to the admission of new evidence in many instances. Judicial reviews are still available to challenge the refusal of an administrative review, but they can only be brought on public law grounds, which set a higher bar than a standard merits-based appeal. We welcome consultees' views on these issues.

6.16 In addition, the wider consequences of an initial refusal decision can be significant for the applicant. Where a person is challenging an administrative review decision after the expiry of their current leave, which will be the case in many instances, their statutorily extended leave under section 3C of the Immigration Act 1971 will lapse on the service of the outcome of the administrative review. Therefore, if they wish to judicially review that outcome, and remain in the UK while that judicial review proceeds, they will no longer have leave to enter or remain. As a result, they may be

[299] *Mandalia v Secretary of State for the Home Department* [2015] UKSC 59 at [2].

subject to restrictive measures in relation to their ability to work, rent accommodation, maintain a bank account and so on.[300]

6.17 Applicants may also prioritise certainty in order to avoid the need to re-apply due to the high level of application fees now applicable in most categories.

6.18 The impact of loss of certainty could be ameliorated, as currently in the case of Appendix EU and under evidential flexibility policies,[301] by a discretion on the part of the decision-maker to contact applicants where information or evidence is missing.

6.19 Lack of certainty also carries, for the Secretary of State, a risk of more litigation over the meaning and effect of the Rules, at least until the system becomes more established. Even under the points-based system and Appendix FM rules, there has been extensive litigation on the meaning of specific phrases.[302] With less detail being prescribed in the Rules, it may be the case that the Upper Tribunal or higher courts may be called upon frequently to interpret the meaning of more generally worded provisions as they pertain to certain circumstances. This could lead to the courts settling policy, unless and until the Home Office chooses to amend the Rules further.

6.20 For example, there was extensive litigation in the past relating to aspects of the "adequate maintenance" test for family members of settled persons under Part 8 (the requirement "to maintain themselves and any dependants adequately without recourse to public funds"). In *KA and Others (Adequacy of Maintenance) Pakistan,*[303] *the* Asylum and Immigration Tribunal held that this was an objective test, related to the income support level.[304] In *Mahad v Entry Clearance Officer* the Supreme Court held that the same test did not exclude applicants from relying on third party support. [305] The relevant Immigration Directorate Instructions (guidance) could not read this exclusion into the adequate maintenance requirement.[306]

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300 Immigration Act 1971, section 3C(2)(d)(ii); Appendix AR, para AR 2.9. See appendix 6 for the measures introduced, in particular by the Immigration Acts 2014 and 2016, which have been widely described in the media as intended to create a 'hostile environment' for migrants who are in the UK without valid immigration status.

301 Discussed at paras 6.52 to 6.66 and para 6.79 below.

302 See, for example, *Pokhiyral v Secretary of State for the Home Department* [2013] EWCA Civ 1568, in relation to the phrase "academic progress" in para 120B of Appendix A, and *Iqbal v Secretary of State for the Home Department* [2015] EWCA Civ 169 in relation to the interpretation of requirements in para 41-SD in Appendix A in a Tier 1 (Entrepreneur) application where relying on third party funds.

303 [2006] UKAIT 65.

304 Para 6 of the Immigration Rules now includes the following definition: '"Adequate" and "adequately" in relation to a maintenance and accommodation requirement shall mean that, after income tax, national insurance contributions and housing costs have been deducted, there must be available to the family the level of income that would be available to them if the family was in receipt of income support.'

305 [2009] UKSC 16.

306 Note that in the case of Rules intended to produce an Article 8-compliant result, and where Article 8 of the ECHR is engaged, judicial decision-makers are required to reach their own decision on whether an application meets the requirements of the Rules. An example is the 'unjustifiably harsh consequences' requirement in Appendix FM GEN.3.1.

6.21 The exercise of discretion is itself subject to the general public law principle that it has to be exercised consistently and in accordance with the underlying policy.[307]

6.22 Finally, in order for the Secretary of State to reduce litigation and maintain consistent decision-making, it is likely that there would be transitional costs. These might include the costs of altering internal processes and training caseworkers to be able to make discretionary decisions. It may be the case that organisational structures would need to be changed.

CONTRASTING THE CURRENT AND FORMER RULES: TIER 1 (ENTREPRENEUR) AND THE PRE-2008 RULES

6.23 One way to illustrate the difference between the current approach and a less prescriptive alternative is to look further at the pre-2008 Business Person Rules, a section of which was considered in chapter 5, and contrast them with the current Rules.

6.24 The Business Person category was closed to new entrants in 2008 and replaced by the Tier 1 (Entrepreneur) category. There have been numerous changes to the Tier 1 (Entrepreneur) category since it was launched, in some cases due to Home Office concern about suspected abuse of various aspects. The Tier 1 category has become less prescriptive than it was originally, in that there are now subjective, discretionary 'genuineness' tests at each stage of entry, extension and indefinite leave to remain.

6.25 Comparing the mechanics of the two categories will help us consider the desirability of a less prescriptive approach to the Rules which does not breach the *Alvi* principle. The Business Person Rules were very much shorter, with guidance set out in discretionary terms as to how to demonstrate eligibility. These included criteria for assessing the viability of a business, and the information that a business plan should contain. All Business Person applications were referred by Entry Clearance Officers (ECOs) to a specialist team of caseworkers at Work Permits (UK) in Sheffield for decision. Entry clearance could not be authorised or refused without reference to an ECO of Senior Executive Officer level or above. The relevant Immigration Directorate Instructions guidance was much more flexible and broadly drawn than the Tier 1 (Entrepreneur) Immigration Rules (or the Tier 1 (Entrepreneur) policy guidance).

6.26 At the stage of initial entry into the category, the Tier 1 (Entrepreneur) category contains a large number of evidential and substantive criteria in relation to the funds that are being invested. These go to the level of detail of lawyers' letters confirming the authenticity of signatures on certain specified documents going to the source of funds.[308] The Business Person category was far less prescriptive in that respect, with the relevant 'Financial requirements' section of the guidance containing just 500 words. This section also included certain criteria that were not replicated in Tier 1 at all, for example, a requirement that the applicant's level of financial investment should be proportional to his or her interest in the business.

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307 See, for example, the discussion in *Mudiyanselage v Secretary of State for the Home Department* [2018] EWCA Civ at [17] in relation to the exercise of the evidential flexibility policy.

308 Appendix A, para 41(a)(vii); these requirements were extended to further types of documents in statement of changes HC 1154 for applications submitted on or after 6 July 2018.

6.27 The previous requirement "that there is a genuine need for his or her investment and services in the United Kingdom" is now one aspect considered within the wider 'genuineness' test that was introduced into Tier 1 (Entrepreneur) in January 2013.[309] This test, which now applies, in modified forms, to extension and indefinite leave to remain applications, provides that the decision-maker must be satisfied of a number of aspects which broadly go to the intentions of the applicant. For example, he or she must genuinely intend and be able to establish, take over or become a director of one or more businesses; the money he or she is relying on must be genuinely available to them, and so on. The genuineness tests are subjective and discretionary.

6.28 The requirements for extension of stay as a Business Person only contained a limited number of additional requirements (other than the applicant continuing to meet relevant requirements for initial entry to the category). The key additional requirements for extension applications were that:

(1) the applicant can show audited accounts which show the precise financial position of the business and which confirm that he has invested not less than £200,000 of his own money directly into the business in the United Kingdom[310]; and

(2) where he has established a new business:

(a) new full time paid employment has been created in the business for at least two persons settled in the United Kingdom; or

(b) where he has taken over or joined an existing business, his services and investment have resulted in a net increase in the employment provided by the business to persons settled here to the extent of creating at least two new full-time jobs.[311]

6.29 In contrast, the Rules covering the Tier 1 (Entrepreneur) category contain many additional mandatory requirements at the extension stage including, broadly, that:

(1) the applicant must have registered as self-employed or as a company director or partner within 6 months (and if they do not do so their leave may be curtailed[312]);

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309 The relevant factor is "the viability and credibility of the applicant's business plans and market research into their chosen business sector": see, for example, para 245DB (h)(iii) of Part 6A. The "genuineness test" for initial applicants for entry clearance can be found at Part 6A, paras 245DB(f)-(m).

310 See para 206(ii) of Appendix F, https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-f-archived-immigration-rules (last visited 24 July 2018).

311 See para 206(viii) of Appendix F, https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-f-archived-immigration-rules (last visited 24 July 2018).

312 Appendix A, Table 5 and para 47; Part 6A, para 245DE(c).

(2) the applicant must be registered as self-employed or as a company director or partner within 3 months of the date of application, and show specified evidence of this and of their ongoing business activity;[313]

(3) the money must "remain available to the applicant until such time as it is spent for the purposes of their business", and there are extensive rules confirming what counts as invested and spent in this context; and curtailment grounds in that regard too;[314]

(4) the investment must be evidenced in a certain way and there are restrictions on the type of investment;[315] and

(5) the applicant must provide very extensive evidence of job creation.

6.30 As regards indefinite leave to remain, the Business Person category again contained only very few additional requirements to those for initial entry.[316] These were that the applicant:

(1) has spent a continuous period of 5 years in the United Kingdom in this capacity and is still engaged in the business in question; and

(2) submits audited accounts for the first 4 years of trading and management accounts for the 5th year.[317]

6.31 In Tier 1 (Entrepreneur) many of the requirements for indefinite leave are the same as at the extension stage, but they are still repeated in full,[318] together with the relevant continuous period (including the provisions for accelerated settlement).

Discussion

6.32 Leaving aside consideration of substantive policy changes between the two sets of rules, which are outside the scope of this paper, the following broad themes can be drawn out of this analysis:

(1) there is a far greater degree of evidential prescription in the Tier 1 (Entrepreneur) category than was the case in its pre points-based system equivalent;

(2) there is a far greater degree of prescription in relation to other matters of immigration policy in the Tier 1 (Entrepreneur) category than was the case in its pre points-based system equivalent; and

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313 Appendix A, Table 5, and para 48.

314 Part 6A, paras 245D(c) and 245DE(c).

315 Part 6A, para 39(a); Appendix A, para 45.

316 In addition to the standard requirements for indefinite leave in work and business categories which were then in force such as meeting the knowledge of language and life in the United Kingdom requirements.

317 See para 209.

318 Appendix A, Table 6.

(3) discretion is retained in the application of the new wider Tier 1 (Entrepreneur) genuineness test.

COMPARATIVE ANALYSIS: NEW ZEALAND

6.33 We have also looked at other jurisdictions, to see whether they have an equivalent body of law to the Rules, and the approach that they take to prescription. Following review of the Australian, Canadian and New Zealand systems, we have focussed on the New Zealand system, which we consider to be the closest parallel to the UK in terms of legal structure. In making this comparison, it is important to note at the outset that, while there are similarities between the UK and New Zealand legal systems, there is a great difference in jurisdiction size and in the volume of arrivals.[319] The system nevertheless provides a useful example of a more discretionary approach to rule-drafting.

6.34 The Immigration Act 2009 is the primary source of immigration law in New Zealand. Section 22 of the Act authorises immigration instructions to be certified by the Minister. Section 25(1) requires that "the chief executive must publish immigration instructions".

The "Operational Manual"

6.35 The Operational Manual contains instructions for deciding immigration applications. The manual states that:

> The Immigration New Zealand (INZ) Operational Manual contains the immigration instructions that people who want to come to New Zealand permanently or for a short time must follow. It includes the criteria that applicants must meet, the evidence they must produce to show that they meet the criteria, and the processes INZ follow to assess and verify applications. The Manual also contains information about INZ's work in protecting New Zealand's border and determining claims for refugee status.[320]

6.36 The Immigration (Visas, Entry Permission and Related Matters) Regulations 2010 require that an application for a residence class visa must provide "the information and evidence required by the relevant immigration instructions to demonstrate that the applicant fits the category or categories of immigration instruction".[321]

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319 The reported population of New Zealand in 2018 was 4.768 million; in the UK it was 66.740 million. In 2017/2018, there were 4.235 million arrivals in New Zealand for selected visa types; in the UK in the same period there were 139.2 million arrivals. See further https://www.immigration.govt.nz/documents/statistics/statistics-arrivals-by-month (arrivals by visa type table) (last visited 7 January 2019) and *Home Office, National Statistics: Summary of latest statistics*, https://www.gov.uk/government/statistics/immigration-statistics-year-ending-june-2018 (last visited 7 January 2019).

320 See https://www.immigration.govt.nz/opsmanual/#35439.htm (last visited 19 June 2018).

321 See http://www.legislation.govt.nz/regulation/public/2010/0241/latest/DLM3148123.html (last visited 13 July 2018), reg 5(2)(a)(iii).

Use of discretion in the New Zealand Entrepreneur categories compared with the UK Tier 1 (Entrepreneur) category

6.37 The Operational Manual is drafted in such a way that many decisions appear to be taken on a discretionary basis. We have looked in more detail at the Entrepreneur Work and Entrepreneur Residence categories in this regard, and generally in comparison with the equivalent UK Tier 1 (Entrepreneur) category.[322]

6.38 The requirements detail key aspects of mandatory policy. They cover, for example, in relation to initial entry under the "Entrepreneur Work" category, who can own the relevant investment funds, restrictions on the types of capital investment, and what aspects a business plan must cover.[323] However, New Zealand's entrepreneur work category has far fewer specific evidential requirements than the UK Immigration Rules in the equivalent Tier 1 (Entrepreneur) category.

6.39 In many cases, the applicant needs to be able to demonstrate "to the satisfaction of" a "business immigration specialist" that the relevant requirement is met. This suggests that there is a specialist team of Immigration New Zealand caseworkers which decides these types of applications. The similar formula "to the satisfaction of a decision-maker" is also the test used in the new EU settlement scheme in the Immigration Rules (Appendix EU) (see below at paragraphs 6.59 and 6.62 to 6.64.

6.40 In relation to entry, there is a "genuineness test" (akin to the test in Tier 1 (Entrepreneur)) whether the applicant genuinely intends to set up a viable business. There are several additional subjective requirements including a "points-based" test, where points are earned according to various attributes. Certain decision-makers may also waive the capital investment "for businesses in science, information and communications technology, or other high value export-oriented sector, which demonstrates a high level of innovation or credible short-term high growth prospects". This waiver can only be approved by "members of the management team of the Business Migration Branch".[324]

6.41 In general, there appear to be more substantive, often highly subjective, requirements at the initial stage in the equivalent New Zealand route. A business plan must show "the proposed business meets at least one of the following three business characteristics identified in the objective" of the category, that is "high growth, innovative, or export potential".[325]

6.42 There is a separate requirement that the applicant must provide evidence (there is a non-exhaustive list of forms of evidence) within 12 months of the grant of the visa that:

> the investment capital for the proposed business, as stated in the business plan, has been transferred directly from the holder's bank account(s) through the banking

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322 See https://www.immigration.govt.nz/opsmanual/#48300.htm (last visited 11 January 2019) and https://www.immigration.govt.nz/opsmanual/#30768.htm (last visited 13 July 2018).

323 See BB3.5.5. They also state that the money must have been earned/acquired legally and transferred legally to New Zealand through the New Zealand banking system.

324 See BB3.5.1.

325 See BB3.15.

system to New Zealand and that reasonable steps have been taken to establish or invest in the business as set out in the business plan.[326]

6.43 This is also the case at the extension ("residence visa") stage where an applicant must show that their business realises the benefits outlined in their business plan.[327]

6.44 By contrast, the UK Tier 1 (Entrepreneur) route requires, in order to apply for an extension after three years, simply that the applicant demonstrates compliance with the investment and other aspects of the requirements. There is less prescription than in the New Zealand Operational Manual about how the business plan has been carried out; there is flexibility as long as changed plans remain viable and continue to meet the genuineness tests.

6.45 There is a separate provision as regards evidence (note the ability to request additional evidence):

> Business immigration specialists must be satisfied that the information an applicant submits complies with the evidential requirements set out in Entrepreneur Work Visa Category instructions and may request additional evidence as they deem necessary to demonstrate that an applicant or a business plan meets the requirements as set out in B3.1.[328]

6.46 The evidence instructions are short, flexible and non-exhaustive, for example BH5.1 "Evidence that the principal applicant has established a business in New Zealand" states:

> (a) All documents submitted to prove that the principal applicant has established a business in New Zealand must be produced by a reliable independent agency.
>
> (b) Evidence that the principal applicant has established a business in New Zealand may include, but is not limited to:
>
> (i) a certificate of incorporation
>
> (ii) audited accounts
>
> (iii) GST records
>
> (iv) other tax records
>
> (c) The business immigration specialist may request any other documents to support the application.

6.47 In summary, it appears that these evidential requirements are much more flexible than the UK Tier 1 (Entrepreneur) route. However, the New Zealand rules include much more extensive substantive requirements.

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326 See BB4.5.

327 Unless they have successfully applied for approval of an altered business plan.

328 See BB3.15.5.

6.48 Other examples of this discretionary approach in the New Zealand Operational Manual include that the "Skilled Migrant Category" uses non-exhaustive lists for evidential requirements. To demonstrate age:

> Evidence … may include, but is not limited to, original or certified copies of:
>
> (a) a birth certificate
>
> (b) a passport or other travel document
>
> (c) an identity card (from countries which require an identity card and where birth details must be confirmed before one is issued).[329]

6.49 Family member rules also use discretion in respect of evidence. Paragraph F2.20 states that:

> Evidence supporting an application under Partnership Category for a residence class visa should include as much information and as many documents as are necessary to show that:
>
> i. the principal applicant's partner:
>
> - is a New Zealand citizen or resident (see F2.10.5); and
> - supports their application for a residence class visa under the Partnership Category; and
> - is eligible to support an application under partnership instructions (see F2.10.10); and
>
> ii. the principal applicant and their New Zealand citizen or resident partner are living together in a partnership that is genuine and stable.

Discussion

6.50 The New Zealand Operational Manual is drafted in such a way that many decisions appear to be taken on a discretionary basis, for example, by stipulating that applicants must demonstrate to an immigration specialist that they satisfy a requirement. By comparison with the UK Tier 1 (Entrepreneur) route, the initial stage of the equivalent New Zealand route appears to have more substantive, often highly subjective requirements. In addition, there are fewer specific evidential requirements. The evidence instructions are short, flexible, and non-exhaustive.

6.51 On the one hand, this approach avoids the need for frequent amendment of rules to cover unforeseen cases that we illustrated (with reference to Appendix FM-SE) in chapter 5. On the other hand, it has been argued that the drafting of the New Zealand immigration rules in a way which permits decisions to be taken on a discretionary basis makes applications more susceptible to being treated unequally. A New Zealand immigration lawyer recently observed:

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329 See SM5.5 Evidence.

Officers have "absolute discretion" in decision-making. This means that they can simply decline an application because they choose not to believe an applicant, or trust a document, or accept on face value a statement made. Basically, decision-making is based on assumptions, rather than facts."[330]

THE EU SETTLEMENT SCHEME

6.52 The EU settlement scheme includes some elements of discretion in relation to evidential requirements. On 21 June 2018, the Government published its statement of intent on the scheme, which set out the details as to how it intends to implement the citizens' rights aspects of the draft Withdrawal Agreement that had been agreed with the EU.[331] The scheme does this principally via the Rules (rather than primary or secondary legislation), although some elements of the Withdrawal Agreement, such as the right of appeal that will apply, will be implemented through legislation. The statement of intent also included a first draft set of Immigration Rules which would underpin the scheme.

6.53 The resulting Rules came into force as Appendix EU (applying initially to a limited cohort of applicants) on 28 August 2018.[332] Appendix EU has unique features and will have represented a significant challenge to the drafters. The Rules have needed to incorporate many aspects of the existing EU law free movement regime[333] into domestic immigration law. They also needed to take into account the more favourable provisions the government has decided to implement for the EU scheme, and the relevant terms of the draft Withdrawal Agreement.

6.54 The scheme is being rolled out from late 2018, to be fully operative by 30 March 2019. Applicants who are resident in the United Kingdom by 31 December 2020 must apply by 30 June 2021.

6.55 The EU Rules are intended to underpin a user-friendly digital application process.[334] Key elements of the scheme include:

(1) discretionary evidential rules on some aspects (including that the Home Office will contact people if a component of their application is missing[335]);

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330 See https://www.radionz.co.nz/news/on-the-inside/358564/students-left-stranded-by-immigration-s-lack-of-oversight (last visited 7 December 2018). See also https://www.idesilegal.co.nz/discretion-breeds-discrimination-immigration/ (last visited 7 December 2018).

331 https://www.gov.uk/government/publications/eu-settlement-scheme-statement-of-intent (last visited 11 July 2018).

332 See statement of changes to the Immigration Rules CM 9675: https://www.gov.uk/government/publications/statement-of-changes-to-the-immigration-rules-cm-9675-20-july-2018 (last visited 25 July 2018).

333 Implemented in the UK by the Immigration (European Economic Area) Regulations, SI 2016 No 1052.

334 See https://www.gov.uk/government/publications/eu-settlement-scheme-statement-of-intent, para 1.12 (last visited 11 January 2019).

335 See Home Office Guidance, *EU Settlement Scheme – EU citizens and their family members* (28 August 2018) p 10: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/753971/eu-settlement-scheme-pb2-v1.0-ext.pdf (last visited 11 January 2019).

(2) the use of cross-departmental data sharing to minimise, where appropriate, the amount of evidence required;[336] and

(3) focussing on the online application system rather than paper applications.

Eligibility

6.56 There are three aspects of establishing eligibility that will apply to the majority of EU citizens and their family members:

(1) proof of identify;

(2) residence in the United Kingdom; and

(3) not being a serious criminal.

6.57 Applicants who have been resident in the United Kingdom for a continuous period of five years by 31 December 2020 are entitled to settled status. "Settled status" is indefinite leave to remain under the Immigration Act 1971, although there are certain differences from indefinite leave to remain under the domestic regime (in order to reflect the draft Withdrawal Agreement). Those who are resident in the United Kingdom by 31 December 2020, but have not been continuously resident for five years, are entitled to "pre-settled" status. They will be granted five years of limited leave to remain and can apply for settled status after five years' continuous residence.[337] As noted, in certain situations, reflecting the Citizens' Directive[338] and EEA Regulations, applicants may be eligible for settlement before they have five years' continuous residence.[339]

Evidential requirements

6.58 The EU settlement scheme moves to a less prescriptive approach in relation to the evidence that can be provided by applicants, involving a tiered evidential system which ultimately seeks to structure discretion. EU caseworker guidance provides first, for checks to be made of government records held by HM Revenue & Customs and the Department for Work and Pensions. If these do not confirm all periods of claimed residence, the guidance provides a list of evidence which can be supplied. This evidence will not be "prescriptive or definitive".[340] There are three tables containing "preferred evidence", "alternative evidence" and "unacceptable evidence". The preferred evidence and alternative evidence are largely documents from official/third

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336 See para A2.1.(b): https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-eu (last visited 11 January 2019).

337 See https://www.gov.uk/government/publications/eu-settlement-scheme-statement-of-intent, paras 1.18 and 3.5 (last visited 11 January 2019). See also paras EU4 and EU14 of Appendix EU: https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-eu (last visited 11 January 2019).

338 2004/38/EC.

339 See https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/753971/eu-settlement-scheme-pb2-v1.0-ext.pdf, pp 42 to 44 (last visited 11 January 2019).

340 See EU Guidance: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/753971/eu-settlement-scheme-pb2-v1.0-ext.pdf, p 56 (last visited 11 January 2019).

party sources, such as bank statements and employers' letters, while witness statements and letters from friends and family are all marked as unacceptable.[341]

6.59 We note that on some matters, such as identity and nationality, particular evidence is still required. For example, applicants under condition 2 of paragraph EU11 – those who already have indefinite leave to enter or remain – must supply "valid evidence of their indefinite leave to remain". This is specified in Annex 1 as:

(a) a valid biometric immigration document (as defined in section 5 of the UK Borders Act 2007), a valid stamp or endorsement in a passport (whether or not the passport has expired) or other valid document issued by the Home Office, confirming that the applicant has indefinite leave to remain in the UK, which has not lapsed or been revoked or invalidated; or

(b) the decision-maker is otherwise satisfied from the information available to them that the applicant has indefinite leave to enter or remain in the UK, which has not lapsed or been revoked or invalidated.

6.60 Other examples are that family members must provide the "required evidence of family relationship", as specified in extensive detail in the definition of that name. There is a limited element of discretion here, largely reflecting the position in the current EEA Regulations on this point.[342]

How the EU Settlement Scheme marks a shift towards less prescriptive evidential Rules

6.61 The EU Settlement scheme introduces greater flexibility and discretion than other parts of the Rules in two main ways.

6.62 The first is that there is greater scope for Home Office officials to base their decision on information available to them, and to obtain and check information. Annex 2 deals with how a valid application should be considered by the decision-maker.[343] Paragraph A2.1 states that:

> A valid application made under this Appendix will be decided on the basis of:
>
> > (i) the information and evidence provided by the applicant, including in response to any request for further information or evidence made by the decision-maker; and

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341 See EU Guidance: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/753971/eu-settlement-scheme-pb2-v1.0-ext.pdf, p 59 (last visited 11 January 2019).

342 See reg 42. In relation to the required evidence of identity and nationality of the EU national of whom the applicant is claiming to be a family member, text at the end of para (cc) of the definition of "required evidence of family relationship" states that this evidence must be produced "unless (in any case) the decision-maker agrees to accept alternative evidence of identity and nationality where the applicant is unable to obtain or produce the required document due to circumstances beyond their control or to compelling practical or compassionate reasons".

343 Para EU8 of Appendix EU provides that Annex 2 "applies to the consideration by the decision maker of a valid application made under this Appendix."

(ii) any other information or evidence made available to the decision-maker (including from other governmental departments) at the date of decision.

6.63 In terms of required evidence, there is a much more flexible approach, including an undertaking to contact applicants where evidence is missing, and provision for the Home Office to obtain evidence on residence (or, for example, criminal conviction checks) from other departments. While it does not shift the burden of evidencing entitlement away from the applicant, it is a much less rigid, and more flexible, approach to evidential provisions in the Rules.

6.64 The second way in which the proposed Rules are less prescriptive is in how the substantive entitlements to leave are drafted. Rather than laying down definite requirements, Appendix EU states that applicants must meet requirements to the satisfaction of the decision-maker. This confirms the discretionary approach, and is the formula that used to be more commonly found in the Rules. The types of evidence that may be accepted in relation to residence are exemplified in the caseworker guidance. Although the guidance states that the list of suggested evidence is indicative and not exhaustive, it also says that letters from friends/other third parties are not to be accepted as relevant evidence. It is less than a fully discretionary approach.

Discussion

6.65 Appendix EU is uniquely born of special policy considerations arising out of the UK's exit from the EU. The UK and EU are both committed to avoiding unnecessary administrative burdens, and there is plainly a very specific policy reason underlying the less prescriptive approaches we have highlighted; we do not yet know how that will work in practice. Moreover, we have noted that in some areas the detailed prescriptive approach to evidential requirements has been retained, for example, with respect to family relationships or identity and nationality.

6.66 Nonetheless, we welcome views as to whether such an approach in the context of evidentiary matters is desirable. It appears to us to be arguable that such an approach would have avoided the successive, detailed amendments to Appendix FM-SE which we considered in chapter 5.

APPENDIX V (VISITORS)

6.67 Another area of the Rules which features a less prescriptive approach is Appendix V. Moreover, that approach features in the context of substantive matters, not evidential requirements.

6.68 Appendix V (Visitors) was introduced into the Rules in 2015. One of its rules states that visitors are prohibited from engaging in certain activities. However, the requirement not to work in the United Kingdom does not exhaustively define "work".

6.69 Paragraph V4.5 states that:

> The applicant must not intend to work in the UK, which includes the following:
>
> (a) taking employment in the UK;

(b) doing work for an organisation or business in the UK;

(c) establishing or running a business as a self-employed person;

(d) doing a work placement or internship;

(e) direct selling to the public;

(f) providing goods and services;

unless expressly allowed by the permitted activities in Appendices 3, 4 or 5.

6.70 This means that caseworkers are not mandated to accept an application, and may still curtail leave, if a visitor undertakes a work-related activity which is not on the list. Caseworkers can use their discretion when uncontemplated scenarios arise, referring to guidance when necessary. For example, the visitor guidance supplementing paragraph V4.5 to V4.10 on prohibited activities states:

> it may be considered that an applicant is intending to directly sell goods or services to the public as opposed to negotiating and signing deals or contracts:
>
> > the former is a prohibited activity for visitors whereas the latter activity is permitted
> >
> > the information in the visa application form or from questioning the applicant would need to support the assessment of whether or not they intend to undertake a prohibited activity

6.71 The Home Office's choice to express the Rules more generally means these Rules do not need to be updated to fill gaps in the prescription, because they simply do not try to anticipate and define prohibited activities in a comprehensive and detailed manner. An examination of the statements of changes to the Rules between 2015 and 2018 reveal that these prohibited activities have not been subject to continual amendment. This might suggest that a non-exhaustive list, which requires the use of discretion, has not caused significant issues in practice.

Consultation Question 13.

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

WHAT AREAS OF THE IMMIGRATION RULES MIGHT BENEFIT FROM LESS PRESCRIPTION?

6.73 Another aim of this chapter is to consider whether it might be possible to identify types of rules that are apt to be expressed in a less prescriptive way. We have considered a number of examples from a variety of sources. The much shorter pre-2008 Rules in the Business Person category relied on elements of discretionary guidance, in contrast to the evidentially more prescriptive Tier 1 (Entrepreneur) Rules, which

nevertheless contain a subjective discretionary 'genuineness' test. The equivalent New Zealand Rules rely much more on discretion. The Appendix EU Rules use nuanced flexibility and discretion in relation to evidential requirements. Parts of Appendix V contain more general stipulations supplemented by guidance.

Evidential rules

6.74 Rules which simply go to evidencing how a substantive requirement is met are an identified major candidate for a less prescriptive approach. There will always be circumstances where sound policy requires that particular types of documents – and only those documents – will do. The nuanced approach in Appendix EU, though born of unique circumstances, illustrates that some evidentiary requirements such as those proving identity and nationality can be prescribed, alongside a flexible approach to other types of evidence.

Appendix FM-SE and specified evidence of financial eligibility

6.75 We noted in chapter 5 how paragraph 10 of Appendix FM-SE has been the subject of many and repeated amendments. These did not seem to us to change the substantive policy of requiring genuine means of support. Rather, because any and every example of such means needed to be specified in paragraph 10, the Home Office seems to have been involved in a process of continuous updating as examples from practice of genuine income came about, or institutional changes necessitated an update of the text.

6.76 We seek views on whether a more generally expressed rule, in effect requiring genuine capital or income, together with a less prescriptive approach to evidential matters, might be a better way forward. This chapter suggests that a range of alternatives are available.

6.77 At one end of the spectrum, evidential matters can be left to the discretion of the decision-maker. Rules would be expressed in the form "*x* is demonstrated to the satisfaction of the decision-maker". Further detail as to suggested documentary evidence could be specified as non-exhaustive lists in guidance. Officials who are satisfied that an applicant substantively complies with the rule, notwithstanding that their case is not contemplated by the evidentiary examples in guidance, would be able to follow their judgement. The guidance could in due course be updated to take account of scenarios encountered in practice.

6.78 The choice is not between a highly prescriptive approach and unrestricted discretion. As we noted from our analysis of Appendix EU, for example, there are intermediate positions; specified evidence can be required where the policy is that only particular evidence will do; documents can be arranged into tiers.[344]

Recent Developments in Home Office policy on evidential and administrative flexibility

6.79 The Home Office has in the past operated a policy permitting a limited degree of flexibility in requesting documents missing from an application in certain specified categories. The ambit of the policy, known as the 'evidential flexibility policy', was the

[344] See paras 6.52 to 6.65 above.

subject of extensive litigation.[345] There have been a number of versions of the policy. Until recently, it was still narrowly confined. The changes introduced to the Rules on 11 October 2018[346] provide for a more generous approach. Caseworkers have been given more flexibility in deciding whether to write to an applicant to ask for any missing documents, to be provided within a reasonable time frame. The amendments also allow for an application to be granted where evidence is missing or in the wrong format, where "the missing information is verifiable from other documents provided with the application or elsewhere".[347]

6.80 The Home Office Windrush Scheme Guidance provides a wider discretion: caseworkers "must take a holistic view where evidence is not provided that proves matters of fact and decide the case on balance of probability".[348]

Discussion

6.81 A criticism of a less prescriptive approach might be that removing such matters from the Rules and putting them into guidance simply displaces complexity, and by doing so, potentially increases it (see chapter 4). However, as we discuss further in chapter 14, it may be the case that the Rules could be displayed online alongside additional aspects of guidance on one interface. In practical terms, there is also the risk that applicants would have less certainty in relation to how they should evidence their applications. This may be significantly lessened with detailed guidance showing non-exhaustive examples of evidence that would be likely to be accepted.

Other types of Rule

6.82 It is, in our provisional view, more difficult to isolate any other "type" of Rule which might be more suitable for being made discretionary. In considering this question we have set out an illustrative model showing three "levels" of prescription in three different categories of stay: family member, entrepreneur and worker. In all cases, and at all levels, it really comes down to the extent of prescription that it is Home Office policy to require.

Level 1

6.83 A basic principle which captures the fundamental purpose behind the relevant policy, for example, that an applicant:

(1) who is applying as a relevant family member of a settled person, must show that they have sufficient resources to be able to maintain and accommodate

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345 See, in particular, *Mandalia v Secretary of State for the Home Department,* [2015] UKSC 59. See also *Mudiyanselage v Secretary of State for the Home Department* [2018] EWCA Civ 65. The points-based system Rules on evidential flexibility are found at Part 6A, para 245AA. The Appendix FM-SE Rules on evidential flexibility are found at Appendix FM-SE, para D. The Appendix KoLL Rules on evidential flexibility are found at Appendix KoLL, Part 4.

346 HC 1534: https://www.gov.uk/government/publications/statement-of-changes-to-the-immigration-rules-hc-1534-11-october-2018 (last visited 11 January 2019).

347 Para 245AA(d).

348 Home Office, Windrush Scheme Guidance, version 1.0 (2012), p 12.

themselves and any other family members without having recourse to public funds;

(2) must have sufficient funds, expertise and a viable business plan to invest in a new or existing business in the UK which will employ settled workers as a result of that investment; or

(3) will be taking up a highly skilled job in the UK for which the UK prospective employer has been unable to find a settled worker, and which will not undercut domestic salaries.

Level 2

6.84 The inclusion of some minimum standards detailing how the above requirements should be met, but leaving many elements beyond that to a caseworker's judgement, for example:

(1) the applicant must be able to show that they have/will have available to them a minimum per annum income of a certain level (£18,600), with an additional specified amount per child, or savings at a certain level;

(2) that the applicant has access to a certain level of funds (for example £200,000), and following their arrival in the UK, employs at least 2 settled workers for at least 12 months each; and

(3) that the job meets a certain skill level, that the employer has been unable to find a suitable settled worker following a search of resident labour market which is appropriate to the role, and that they will be paid the market rate for the role.

6.85 As with purely evidential requirements, fleshing out these requirements with other non-mandatory ways of demonstrating that these more flexible requirements are met in guidance does not in our view breach the *Alvi* principle, providing that they are genuinely discretionary (as discussed below). For example, in relation to example 1 above, this might relate to what types of funds are held by or are otherwise available to the applicant, whose funds they are, and so on.

Level 3

6.86 The inclusion of extensive detailed prescriptive requirements to ensure that policy objectives are met, routes are not abused, and to embed transparency and certainty for applicants and decision-makers.

6.87 It is uncontroversial to note that the Level 3 approach has characterised the drafting of the Rules since 2008:

(1) Appendix FM and FM-SE.

(2) Tier 1 (Entrepreneur) route with Part 6A and Appendix A (and additional aspects such as English language and maintenance in other Appendices)

(3) Tier 2 (General) which now has both very extensive Rules and an entire sponsor licensing regime, with detailed and complex sponsor guidance.

6.88 In *Alvi*, Lord Walker posited the following proposition, which is similar to our 'Level 2' prescription:

> It might be possible to imagine a system of immigration control with the same underlying policy as the present points-based system, but with the essential elements expressed in general terms of one or more of (i) job skills; (ii) appropriate rate for the job; (ii) shortage occupations; and (iv) resident labour market test, underpinned by non-mandatory guidance as to the evidence to satisfy the requirements promulgated in a form which was not part of the Immigration Rules and was not laid before Parliament. Such a system could have the advantage of providing flexibility in relation to variations in the employment market as between different industries and different regions. But it would be less easy to administer and less predictable in its decision-making.[349]

6.89 It is ultimately a policy decision for the Secretary of State as to whether this alternative approach might be apt for parts of the Rules. We seek views as to whether reintroducing less prescription in appropriate parts of the Rules may be a way to achieve a deeper simplification of the Rules. There is reason to conclude that, if properly done, having high-level, more general rules, supplemented by evidentiary provisions in guidance, would not fall on the wrong side of *Alvi*. The *Alvi* decision noted that the earlier form of the Rules did not create problems of the kind that the points-based system introduced.[350]

6.90 We seek views as to whether Home Office should consider reviewing the content of the Rules to determine which parts necessitate a drafting style which seeks to prescribe, in complete detail, how applications should be determined. In other cases, it may be better fundamentally to redraft the Rules so that they are more general. The latter approach may be more advantageous where:

(1) past experience shows that successive and ongoing iterative amendments have been made to accommodate meritorious cases or exclude unmeritorious ones;

(2) the pace of technological or societal change is such that matters of detail are best left to guidance, with a flexible rule in place; or

(3) fundamentally the issue is one of judgement for officials, whether of the kind that immigration officials used to make, or one assisted by the improved access to information, including cross-Governmental checks, available to the Home Office now or imminently.

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349 *R (Alvi) v Secretary of State for the Home Department* [2012] UKSC 33 at [118].

Consultation Question 14.

6.91 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.

Consultation Question 15.

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

Consultation Question 16.

6.93 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).

Consultation Question 17.

6.94 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.

Consultation Question 18.

6.95 Our analysis suggests that, in deciding whether a particular provision in the Immigration Rules should be less prescriptive, the Home Office should consider:

(1) the nature and frequency of changes made to that provision for a reason other than a change in the underlying policy;

(2) whether the provision relates to a matter best left to the judgement of officials, whether on their own or assisted by extrinsic guidance or other materials.

Do consultees agree?

Consultation Question 19.

6.96 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”?

Chapter 7: Organisation of the Immigration Rules – the contrasting approaches currently followed

7.1 This chapter looks at the way the Immigration Rules are currently structured. It then looks in more detail at three contrasting structural approaches that appear to have been adopted at various stages of the development of the Rules. These we have termed the "common provisions" approach,[351] the "multiple parts" approach[352] and the more recently applied "booklet" approach.[353] Finally it discusses the duplication of provisions that is inherent in the booklet approach and the presence of inconsistencies between similar provisions as found in the common provisions and in booklets.

7.2 The next chapter discusses how the Rules might be organised in future.

THE CURRENT STRUCTURE

7.3 Currently, the Rules comprise 18 numbered Parts, preceded by an Index and an unnumbered Part entitled "Introduction", and 29 Appendices.

7.4 The numbered Parts are numbered from 1 to 15, but include a Part 6A in addition to Part 6;[354] and Part 11 is followed by Parts 11A and 11B. The early Parts (the Introduction and Part 1 (Leave to enter or stay in the United Kingdom)) are of general application. Prior to 24 April 2015, Part 2 contained the Rules for Visitors. It has been replaced by Appendix V (Visitors). Part 2 now contains four transitional Rules and is headed "Transitional provisions". Parts 3 to 8 deal with what may be conveniently described as "categories" of immigration applicants or, alternatively, immigration "routes".[355] Migrants are divided into categories or routes according to the purpose of their entry or stay. Part 9 (General grounds for refusal) was initially conceived as being of general application: paragraphs 320 and 322 within it expressly apply "in addition to the grounds of refusal … set out in Parts 2-8 of these Rules".[356] The remaining Parts deal in the main with supplementary matters, not specific to any

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351 Where Parts or Appendices of the Immigration Rules consist of "common provisions" which apply to multiple categories of applicant.

352 Where requirements applying to a particular category of applicants are spread across multiple parts of the Immigration Rules and/or Appendices.

353 A self-contained Part or Appendix such that the reader does not have to refer to other Parts or Appendices (or has to do so as little as possible).

354 Part 6 (Self-employment and business people) in fact contains no surviving Rules at all, as all of its provisions have been deleted and replaced by the points-based system.

355 Part 3 (Students), Part 4 (Work experience), Part 5 (Working), Part 6A (Points-based system), Part 7 (Other categories) and Part 8 (Family members). As already noted, Part 6 (Self-employment and business people) no longer contains any operative Rules, while most of Parts 3, 4 and 5 have been replaced with points-based system categories.

356 The reference to Part 2 is no longer appropriate. The universal application of Part 9 has been removed by the introduction into the Immigration Rules of categories of applicant or "route" that are not covered by Parts 2 to 8, and have their own "suitability" provisions, which largely mirror the refusal grounds in Part 9.

particular category of migrant but of wider application.[357] The exceptions are Parts 11, 11A and 11B, which cover Asylum and Temporary protection, and Part 14 (Stateless persons).

7.5 The original structure of the current Rules[358] has been significantly affected by amendments, particularly the incremental addition of Appendices. In pursuance of the "booklet" approach which we discuss below, many categories of migrant 'route' are now covered by sets of Rules that are found in Appendices rather than in Parts of the main body of Rules. The "points-based system" was grafted into the Rules at Part 6A, together with various linked Appendices. This replaced most but not all of the previous provisions for employed and self-employed migrants. The Rules governing entry of family members are spread between Part 8 and the more recently introduced Appendices FM and FM-SE.

7.6 The provisions, other than those dealing with particular categories of migrant, take a variety of forms. Some, such as the Introduction, Part 1 and Part 9 (in its original conception) are/were viewed as being of universal application. Part 10 (Registering with the police) applies to nationals of some 40 countries listed in Appendix 2.[359] Similarly, Appendix T (Tuberculosis screening), in conjunction with paragraph A39 in Part 1 (Leave to enter or stay), requires certain applicants for entry clearance to present a certificate that they have tested negative for tuberculosis. The list of countries to which the requirement applies is contained in Appendix T, while the list of clinics approved to issue certificates is in guidance.[360]

7.7 Part 15 (Condition to hold an ATAS clearance certificate) takes a different form.[361] The Part applies where another provision elsewhere in the Rules refers to a requirement to hold such a certificate; it spells out what the condition entails. Similarly, Appendix KoLL applies where the Rules require an applicant to demonstrate knowledge of English language and life.

7.8 The next part of this chapter looks at the three contrasting approaches to the organisation of material.

THE COMMON PROVISIONS APPROACH

7.9 The organisational approach followed by the Rules as originally restated in 1994 was what we have termed the common provisions approach. As mentioned above, it involved Parts containing provisions which apply to multiple categories of applicants.

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357 Part 10 (Registering with the police), Part 12 (Procedure and rights of appeal), Part 13 (Deportation) and Part 15 (Condition to hold an ATAS clearance certificate).

358 Laid before Parliament on 23 May 1994 as HC 395.

359 Also to stateless persons and those holding non-national travel documents.

360 Para A39 provides that such a certificate will be required by persons applying for entry clearance to come to the UK for more than six months or as a fiancé(e) or proposed civil partner applying for leave to enter under Appendix FM, having been present in a country listed in Appendix T for more than six months immediately prior to their application.

361 ATAS stands for the Academic Technology Approval Scheme. An ATAS certificate is required by all international students applying for certain postgraduate qualifications in the UK where the knowledge acquired can be used either in programmes of developing weapons of mass destruction or their delivery. See https://www.gov.uk/guidance/academic-technology-approval-scheme (last visited 5 December 2018).

Prominent surviving examples are Part 1 (Leave to enter or stay in the United Kingdom) and, to some extent, Part 9 (General grounds for refusal).

7.10 The theory of the common provisions approach is that provisions which apply to all or at least multiple categories of applicants are set out in one place in the Rules. The expectation is that users should consult the common provisions as well as those specific to their "route".

7.11 Where the application of these provisions to particular categories of applicants needs to be excluded or modified, the Rules sometimes do this within the body of provisions of general application. On other occasions they do it in the Part of or Appendix to the Rules specific to the category in question.

7.12 Examples of the first approach occur in Part 9 (General grounds for refusal). The applicability of the general grounds is qualified by Rules spread around Part 9 itself. Subject to a number of exceptions, the general grounds for refusal do not apply to those applying under Appendix FM (Family Members),[362] Appendix Armed Forces[363] or Appendix V (Visitors)[364] of the Rules. They also do not apply, for example, to those applying for leave to remain on the grounds of private life under Part 7 (Other categories), or to those applying for asylum under Part 11.[365]

7.13 Similarly, a provision within Part 9 limits the general grounds for refusal that apply to applications for leave to remain under Part 5 (Working in the United Kingdom) as a domestic worker who is the victim of slavery or human trafficking.[366]

7.14 Another example, occurring in relation to a points-based system category, is paragraph 28A(a) of Part 1. This specifies an exception to the general principle that entry clearance applications be made prior to entry in the country of nationality or usual residence. It specifies that Tier 5 (Temporary Worker) applications "may also be made at the post in the country or territory where the applicant is situated at the time of the application". There are no cross-references to this Part 1 provision in the Part 6A Rules relating to temporary workers.

7.15 An apparent example of the second approach is paragraph 276ADE in Part 7 (Other categories). This specifies, as one of the requirements to be met by an applicant for leave to remain on the grounds of private life, that the applicant "does not fall for refusal under" suitability grounds set out in Appendix FM (Family members). Those suitability grounds largely duplicate the general grounds for refusal. The apparent intention of paragraph 276ADE is therefore to disapply the general grounds and substitute the suitability grounds in Appendix FM. However, in this instance Part 9 (General grounds for refusal) only states that it "does not apply to an application for

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362 See para A320.

363 See para B320.

364 See para C320.

365 Paras 276ADE to 276DH. The suitability requirements in Appendix FM (Family members) apply to these individuals.

366 See paras 159I to 159K and para 322.

leave to remain on the grounds of private life".[367] Part 9 does not specify that the Appendix FM suitability grounds apply to private life applications instead.

7.16 Some of the Appendices also contain requirements which apply to multiple categories of applicants, such as Appendices A (Attributes), B (English language) and C (Maintenance (funds)), applying to the points-based categories. Similarly, Appendix O (Approved English language tests) sets out a list of English language tests that have been approved by the Home Office for English language requirements for limited leave to enter or remain under the Rules.

THE MULTIPLE PARTS APPROACH

7.17 At the other end of the spectrum, requirements applying to a particular category of applicant are sometimes spread across various Parts of and Appendices to the Rules. This means that applicants need to refer to multiple parts of the Rules, not merely to find provisions of general application but to determine the category-specific eligibility requirements which they must satisfy. The points-based system is organised in this way.

7.18 Eligibility requirements for points-based system applications are largely divided between Part 6A and various Appendices specific to it. This method of organisation was an innovation at the time that the points-based system was introduced in 2008, possibly to ring-fence the new system within the Rules in order to distinguish it from the pre points-based system categories. In doing so it sets out the points scored for "attributes" in Appendix A; and contains internal sets of common provisions, relevant to points-based system applicants only, in Appendices B and C. However, the effect of this approach (as discussed in chapter 9) is to require a user of the Rules to follow a trail through several different locations in order to find the category-specific requirements.

7.19 Box 1 below illustrates this way of organising the Rules by reference to the Tier 1 (Entrepreneur) route. This is extracted from paragraph 245DB in Part 6A:

Box 1

Requirements:

(a) The applicant must not fall for refusal under the general grounds for refusal.

(b) The applicant must have a minimum of 75 points under paragraphs 35 to 53 of Appendix A.

(c) The applicant must have a minimum of 10 points under paragraph 1 to 15 of Appendix B.

(d) The applicant must have a minimum of 10 points under paragraph 1 to 2 of Appendix C.

[367] See para A320.

7.20 Appendix A (Attributes) does not merely contain a list of attributes and associated points. It also includes detailed provision on matters such as the number of applicants that particular "Designated Competent Bodies" such as the Arts Council may endorse in Tier 1 (Exceptional Talent) (paragraph 4). Other matters include the requirement to apply for endorsement using a specified form (paragraph 5) and to hold a Home Office approval letter (paragraph 6). It runs to 79 pages of text.

7.21 Appendix A (Attributes) also sets out required documentary evidence. For example, as shown in box 2 below, paragraph 6A of Appendix A prescribes as follows:[368]

> Box 2
>
> 6A. Points will only be awarded for money earned in the UK if the applicant provides the following specified documents:
>
> (a) If the applicant is a salaried employee, the specified documents are at least one of the following:
>
> (i) payslips confirming his earnings, which must be either:
>
> (1) original formal payslips issued by the employer and showing the employer's name, or
>
> (2) accompanied by a letter from the applicant's employer, on company headed paper and signed by a senior official, confirming the payslips are authentic.

THE BOOKLET APPROACH

7.22 The first introduction of the "booklet" approach to the Rules came with the publication of Appendix FM (Family members) in June 2012 in statement of changes HC 194, which came into force on 9 July 2012. Requirements concerning family members of settled persons were historically contained within Part 8 (Family members). However, since July 2012, Appendix FM (Family members) and Appendix FM-SE (Family members – specified evidence) have replaced the former partner, partner and child, parent and adult dependant routes for new family member applicants. Other child routes were retained within Part 8, while a complex set of transitional provisions kept those previously granted leave under the pre-July 2012 Rules within Part 8.

7.23 The booklet approach aims for each category-specific Part of the Rules to contain every requirement which a specific category of applicant must satisfy. The rationale is that it is simpler if applicants can look at a single part of the Rules to ascertain all the requirements which relate to their application. The same approach was followed with

[368] Under the heading "Attributes for Tier 1 (Exceptional Talent) Migrants".

the subsequent introduction of Appendix (Armed forces)[369] and Appendix V (Visitors)[370]. More recently, although in an entirely different context, and with extensive modifications, Appendix EU also follows this approach.[371]

7.24 The booklet approach has never been fully comprehensive. Various provisions in Part 1 (Leave to enter or stay in the United Kingdom), such as those relating to how entry clearance applications should be decided, and how to make a valid application for leave to remain in the UK, apply to applicants under Appendix FM, Appendix V and Appendix Armed Forces. Appendix KoLL (Knowledge of Language and Life in the UK) also applies to persons in Appendix Armed Forces and Appendix FM who are applying for indefinite leave to remain (and there are relevant cross-references in those Appendices).

7.25 Other cross-references include reference in Appendix V (Visitors) to Part 1 of the Rules (Leave to enter or stay in the United Kingdom) on third party undertakings for maintenance and accommodation, and to Part 1 and Appendix T (Tuberculosis screening) in relation to tuberculosis screening.[372] Appendix Armed Forces also cross-refers to Appendix FM-SE (Family members – specified evidence).[373] These Appendices therefore continue to interact with other parts of the Rules and cannot be relied upon in isolation.

7.26 The introduction into the Rules of Appendix FM-SE (Family members – specified evidence), less than a fortnight after the introduction of Appendix FM itself,[374] meant that the two appendices turned into a manifestation of the multiple parts approach. Broadly speaking, Appendix FM contains substantive requirements and Appendix FM-SE contains evidential requirements.

7.27 Paragraph A in Appendix FM-SE (Family members – specified evidence) states that it contains "the specified evidence applicants need to provide to meet the requirements of Rules contained in Appendix FM". This split makes the Rules more challenging to use, and important provisions can be easy to miss.

7.28 For example, paragraph E-ECP.3.1. in Appendix FM (Family members) requires that, to be eligible for entry clearance as a partner, an applicant must have a "specified" gross annual income of at least £18,600.[375] However, readers will only be directed to Appendix FM-SE if they have seen paragraph GEN.1.4. of Appendix FM, which states that "In this Appendix 'specified' means specified in Appendix FM-SE".

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369 Brought into the Immigration Rules from the end of 2013.

370 Brought into the Immigration Rules from April 2015.

371 Brought into the Immigration Rules, initially for a limited group of people, from 28 August 2018.

372 See paras V 4.4 and V 4.16(b).

373 See Appendix (Armed forces), Part 4, para 21: "If P and P's sponsor are married or in a civil partnership, it must be a valid marriage or civil partnership as specified in Appendix FM-SE."

374 The history of the introduction of Appendix FM-SE is recounted in chapter 5.

375 See, for example, para E-ECP.3.1.

DUPLICATION AND INCONSISTENCY

7.29 An inevitable consequence of the booklet approach is that provisions of general application have to be "duplicated" or repeated in each booklet. There are already many examples in the Rules of repetition or near repetition of various requirements. Were a full booklet approach to be adopted, there would be many more. The repetition of provisions is not in itself necessarily a problem, particularly where the Rules are viewed online. However, in many instances the wording is not identical; this can lead to confusion and complexity.

7.30 There are inconsistencies of wording between Part 9 (General grounds for refusal) and the suitability criteria in Appendix FM (Family members). Many of these do not give rise to a different effect. Where there is a difference in effect, there may be an evident policy reason for the difference. In some cases, it is hard to discern a policy reason. Some of the differences are minor, but some are more substantive. Overall, the differences between provisions in Part 9 and Appendix FM fall into three categories:

(1) the wording is different but has the same effect;

(2) the wording is different and it is unclear if a policy distinction is intended; and

(3) the wording is different and there are likely policy distinctions.

7.31 We discuss each type of inconsistency in turn.

Different wording that has the same effect

7.32 In some cases, differences of wording give an impression of difference to Rules which are identical in substance. The example in box 3 below relates to provisions which refer to cautions administered in accordance with section 22 of the Criminal Justice Act 2003.

Box 3	
Paragraph 320(7B)(vii) in Part 9 (General grounds for refusal)	S-EC.1.8. in Appendix FM (Family members)
Unless the applicant … left or was removed from the UK as a condition of a caution issued in accordance with section 22 of the Criminal Justice Act 2003 more than 5 years ago.	The applicant left or was removed from the UK as a condition of a caution issued in accordance with section 22 of the Criminal Justice Act 2003 less than 5 years prior to the date on which the application is decided.

7.33 The discrepancy here is minor. In one case, an exception to the ground of refusal is created where the caution was given "more than 5 years ago", while in the other the ground of refusal is confined to cautions administered less than five years previously. The drafter of Appendix FM also took the opportunity to make it explicit that the five years are counted back from the date of the decision, but did not at the same time introduce this clarification into Part 9.

Inconsistencies: unclear if a policy distinction is intended

7.34 We give three examples where it is unclear whether a distinction is intended. The first example (see box 4 below) concerns provisions on providing physical data.

Box 4	
Paragraph 320(20) in Part 9 (General grounds for refusal)	S-EC.1.6. in Appendix FM (Family members)
Failure by a person seeking entry into the United Kingdom to comply with a requirement relating to the provision of physical data to which he is subject by regulations made under section 126 of the Nationality, Immigration and Asylum Act 2002.	The applicant has failed without reasonable excuse to comply with a requirement to- … (c) provide physical data.

7.35 The suitability requirement in Appendix FM (Family members) appears wider than the Part 9 general ground, since it is not limited to data required by the Immigration (Provision of Physical Data) Regulations 2006.[376]

7.36 The second example (see box 5 below) relates to refusing an application for "medical reasons".

Box 5	
Paragraph 320(7) in Part 9 (General grounds for refusal)	S-EC.1.7. in Appendix FM (Family members)
Save in relation to a person settled in the United Kingdom or where the Immigration Officer is satisfied that there are strong compassionate reasons justifying admission, confirmation from the Medical Inspector that, for medical reasons, it is undesirable to admit a person seeking leave to enter the United Kingdom.	It is undesirable to grant entry clearance to the applicant for medical reasons.

7.37 The exception where there are "strong compassionate reasons" that justify admission does not apply to Appendix FM (Family members).

[376] Section 126 of the Nationality, Immigration and Asylum Act 2002 gives the Secretary of State regulation-making powers concerning the compulsory provision of physical data, such as biometrics, photographs and fingerprints. The relevant statutory instrument is the Immigration (Provision of Physical Data) Regulations 2006, SI 2006 No 1743. This has since been amended, for instance by the Immigration (Provision of Physical Data) (Amendment) Regulations 2015, SI 2015 No 737. In practice the regulations have a wide scope.

7.38 The third example (see box 6 below) concerns the requirement that a maintenance and accommodation undertaking be given.

Box 6	
Paragraph 320(14) in Part 9 (General grounds for refusal) Refusal by a sponsor of a person seeking leave to enter the United Kingdom to give, if requested to do so, an undertaking in writing to be responsible for that person's maintenance and accommodation for the period of any leave granted.	S-EC.2.4. in Appendix FM (Family members) A maintenance and accommodation undertaking has been requested or required under paragraph 35 of these Rules or otherwise and has not been provided.

7.39 There are three main differences between these provisions. First, the reference in S-EC.2.4 in Appendix FM (Family members) to paragraph 35 of the Rules is not replicated in Part 9 (General rounds for refusal).[377] However, the reference to paragraph 35 in S-EC.2.4 is followed by the words "or otherwise". Accordingly, S-EC.2.4. seems to be as wide as paragraph 320(14). This is a difference in wording without a difference in effect.

7.40 Secondly, however, paragraph 320 refers to a "refusal" to give an undertaking, while S-EC.2.4 refers to a situation in which an undertaking has "not been provided". The latter, but not the former, seems apt to apply to a case where an undertaking has been requested and no response received.

7.41 Thirdly, in Appendix FM (Family members) there is a reference to an undertaking being "requested or required", whereas in Part 9 (General grounds for refusal) the reference is only to an undertaking being "requested". It is not clear whether in practice this amounts to a substantive difference between the provisions. Paragraph 35 refers to a sponsor being "asked" to give a maintenance undertaking; it does not create a power to require one.

Inconsistencies: likely policy distinctions

7.42 Box 7 below sets out provisions on excluding an applicant on account of convictions.

[377] A reference to para 35 is also included in Appendix V, at V 4.4.

Box 7	
Paragraph 322(1C)(i) in Part 9 (General grounds for refusal) … they have been convicted of an offence for which they have been sentenced to imprisonment for at least 4 years.	S-LTR.1.3. in Appendix FM (Family members) The presence of the applicant is not conducive to the public good because they have been convicted of an offence for which they have been sentenced to a period of imprisonment of at least 4 years

7.43 The main difference between these provisions is that paragraph 322(1C) only applies to applications for indefinite leave to enter or remain. The suitability requirements in Appendix FM have a wider application than the Part 9 grounds of refusal because they also apply to limited leave to remain applications.

7.44 Finally, box 8 demonstrates another difference between the provisions on convictions (Part 9 has a rehabilitation period of 15 years).

Box 8	
Paragraph 322(1C)(ii) in Part 9 (General grounds for refusal) … they have been convicted of an offence for which they have been sentenced to imprisonment for at least 12 months but less than 4 years, unless a period of 15 years has passed since the end of the sentence.	S-LTR.1.4. in Appendix FM (Family members) The presence of the applicant in the UK is not conducive to the public good because they have been convicted of an offence for which they have been sentenced to a period of imprisonment of less than 4 years but at least 12 months.

Indications in guidance as to whether a substantive distinction is intended

7.45 There are further examples of inconsistencies between various similar provisions between Part 9 (General grounds for refusal) and other Parts of the Rules. Again, some of the differences are merely matters of wording and do not amount to differences of substance. In others, it is not clear whether a difference of substance is intended.

7.46 Relevant pieces of guidance suggest that very little, if any, difference of substance is intended. The Immigration Directorate's Instruction on the five-year route for partners and parents under Appendix FM (Family members),[378] in its sections on suitability,

[378] Available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/701273/A

refers caseworkers to the guidance covering Part 9 (General grounds of refusal) and, for the suitability grounds based on criminality, the guidance on Criminality: Article 8 ECHR cases.[379] The only detailed guidance that the instruction gives on suitability grounds in Appendix FM relates to grounds that have no parallel in Part 9, such as S-EC.1.9 (parent or parent's partner presents a risk of harm to a child) and S-LTR.2.5 (failure to comply with investigation of proposed marriage or civil partnership).

7.47 The same appears to be true of other booklets that contain suitability requirements instead of relying on Part 9 (General grounds for refusal), such as Appendix V (Visitors). The relevant guidance document[380] contains no distinct guidance on those provisions but informs decision-makers that the guidance on Part 9 is relevant when applying the Visitor suitability requirements.

7.48 We make provisional proposals for the removal of unnecessary inconsistencies of wording in the next chapter. This forms part of our discussion of how the Rules might be organised in the future.

ppendix-FM-Section-1.0a-Family-Life-as-a-Partner-or-Parent-5-year-rou....doc.pdf (last visited 19 November 2018).

379 See para 7.2.1 of the Instruction.

380 Home Office Visit Guidance, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/673351/Visit-guidance-v7.0EXT.PDF, p 38 (last visited 19 November 2018).

Chapter 8: Restructuring the Immigration Rules: which approach to follow

8.1 Our review presents an opportunity to consider how the Rules and Appendices might be organised more rationally, bearing in mind the extent to which the Rules are now accessed online and the new online application processes. Our objective is to ensure that content is divided in a logical fashion and that the new Parts and Appendices are arranged in a way that ensures that the Rules are user-friendly in a digital era.

8.2 It does not seem to us to be acceptable to have different parts of the Rules structured according to different and inconsistent approaches. A choice needs to be made of a single approach to be applied consistently. Of the approaches described in chapter 7, we find nothing to commend the multiple parts approach. As the points-based system and Appendices FM and FM-SE examples in that chapter illustrate, it increases the complexity of the Rules and creates a need to follow a trail in order to ascertain eligibility in a specific category. It also increases the chances that applicants will miss provisions which apply to them.

8.3 We see advantages and disadvantages in both the booklet and common provisions approaches. We discuss these later in this chapter. Before doing so, it is helpful to review the various categories of material that need to be contained in the Rules, irrespective of which of those two approaches is followed.

CLASSIFYING THE TYPES OF MATERIAL CONTAINED IN THE RULES

8.4 As we mentioned in chapter 7, the contents of the current Rules can be broadly subdivided into “common” provisions of general application (such as procedural provisions governing applications for leave, and administrative review) and provisions containing specific criteria for leave (“routes”) for particular categories of migrant. The position is slightly complicated by the fact that some of the “common” provisions apply universally or nearly so, while others are modified in their application to particular “routes”; a yet further category apply to groups of migrants (nationals of particular countries in the case of the visa requirement or those arriving from particular territories in the case of tuberculosis screening), irrespective of the category of migrant in which they fall.

8.5 The current division of Parts of the Rules into migration “routes” (for example, Visitors, Family Members, etc) strikes us as an eminently sensible approach which should be retained. In the list of possible contents of the Rules set out below we provisionally identify 15 categories into which migrants might be divided for the purpose of separate treatment in a new set of Rules. We invite comments on the appropriateness of our provisional classification.

8.6 We provisionally consider that the “points-based system” is not a helpful categorisation, irrespective of its accuracy or otherwise as a description of the immigration routes currently contained in Part 6A of the Rules. We prefer classification

according to the purpose of entry or stay. We have therefore provisionally reassigned the categories of migrant covered by that scheme.

8.7 It seems to us that the other types of provision made in the Rules (those that, to varying degrees, "over-arch" the categories of immigration route) should also continue to be organised by reference to their subject-matter, much as the Rules already do. In the suggested list of contents below we have attempted to organise them in the sequence in which we provisionally think it most helpful for a reader of the Rules to approach them.

8.8 In order to be comprehensive, the list is presented as a list of contents of a single document. If the "booklet" method of presentation (discussed further below) is preferred, the 15 routes listed under 'specific applications' would each be the subject of a separate booklet, the internal organisation of which could reflect the sequence in the list with any portions that were irrelevant to the particular immigration route omitted.

8.9 Our provisionally proposed division of subject-matter is set out in the next section. Appendix 5 contains a table of destinations giving more detail as to the subject-matter (by reference to the current Rules) that we provisionally allocate to the various parts of our suggested new structure.

OUR PROPOSED DIVISION OF SUBJECT-MATTER

8.10 We have attempted to organise our list of subject-matter on the following principles:

(1) all eligibility and evidential requirements applying to a particular category of applicants should be in one place;

(2) provisions applying to more than one category of applicants should be grouped together according to their subject-matter;

(3) Appendices should not contain bodies of rules but only subordinate narrative or lists;

(4) Part 6A (the Points-based system) should be divided into chapters dealing with particular categories of applicants; and

(5) sets of provisions that are currently separate but apply to the same immigration route (such as Part 8 (Family members), Appendix FM (Family members) and Appendix FM-SE (Family members – specified evidence)) should be consolidated.

Deportation

Part 22: Deportation

Post-decision matters: service of notices and administrative review

Part 23: Service of notices

Part 24: Administrative review

Appendices

Appendix 1 – Tuberculosis screening

Appendix 2 – Approved English language tests

Appendix 3 – Lists of financial institutions

Appendix 4 – Codes of practice for work (sponsors)

Appendix 5 – Shortage occupation list

Appendix 6 – Sports governing bodies

Appendix 7 – Authorised government exchange schemes

8.11 The philosophy behind this provisionally proposed organisation is that the introductory Parts of the Rules should contain basic instructions on how to use the Rules and general background information. The parts now listed under the heading Common Provisions contain requirements that are distinct from the criteria of eligibility under particular routes; they typically apply to multiple categories of applicant. If a booklet approach is preferred, they can be replicated so far as relevant in each of the booklets, with any category-specific modifications.

8.12 The two parts under the heading "post-decision matters" relate to the service of notices following the decision of an application and administrative review of a decision. They only come into play following an adverse decision. If a booklet approach was taken, these post-decision matters could form a separate booklet.

8.13 Our proposed reorganisation omits the current Appendix F (Archived Immigration Rules). For the reasons more fully discussed in chapter 13, we provisionally consider that revoked rules should be available on the Gov.uk website, but not by way of an Appendix to the current Rules. The Home Office has informed us that Part 6 (Self-employment and business people) and Appendix D (Highly skilled migrants) can also be omitted.

[381] European Community Association Agreement with Turkey.

8.14 We seek consultees' views on this proposed new structure and on any alternative structures that might be introduced instead. In particular, we would welcome views on our division between the common provisions and Appendices.

8.15 There are potentially challenging implications of our reform, in particular with regard to the redistribution of current Part 6A (Points-based system) into our new Parts as well as incorporating Appendix A (Attributes), B (English language) and C (Maintenance (funds)) within these new Parts. Despite these drafting issues, we provisionally consider that our proposals would make the Rules easier to navigate and more internally consistent.

Consultation Question 20.

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

A SINGLE SET OF RULES, OR BOOKLETS?

8.17 One of the challenges in redrafting the Rules derives from the fact that there needs to be a statement of them on paper that can be laid in Parliament but that they are (we believe) much more commonly accessed via the internet than by obtaining paper copies. There are, at least in theory, three possibilities as to how they are presented on paper and online:

(1) a statement of a single set of Rules is both laid in Parliament and presented on the internet;

(2) statements in booklet form are both laid in Parliament and made available on the internet;

(3) a statement of a single set of Rules is laid in Parliament; it is reworked editorially so as to produce booklets that are made available on the internet (possibly alongside online publication of the single set of Rules).

8.18 Each of these approaches presents both advantages and disadvantages.

Option 1 – A single set of Rules which includes one set of common provisions: advantages and disadvantages

8.19 The main advantage of a single set of Rules is that it generates significantly less text, avoiding the duplication of common provisions that is inherent in the booklet approach. Its main disadvantages seem to us to be, first, that it presents to the reader text that is irrelevant to their particular case as well as the text that is relevant. Trained lawyers are more practised at passing over irrelevant parts of a legal document, but there is evidence that both they and non-lawyer readers find this challenging.[382]

[382] See Office of the Parliamentary Counsel, "*When laws become too complex: a review into the causes of complex legislation"* (2013).

8.20 Secondly, there is a risk that the reader overlooks relevant portions of text – for example concentrating on the criteria for leave for their immigration category and paying less attention to the procedural chapters or the general grounds for refusal. That risk is probably increased if the reader is navigating a text that contains the whole of the Rules (and thus a considerable amount of material that does not apply to the particular reader), but is not completely removed by the booklet approach. It can be mitigated by appropriate signposting, such as a reminder that an applicant must not fall foul of the general refusal grounds. This is already found in some places in the current Rules.

8.21 Thirdly, additional complications arise where a common provision is modified in the case of a particular application route. In a single set of Rules, the reader will need to read both the text of the provision and the text that modifies it. A booklet approach allows the provision simply to be stated in the modified form. The extent to which this particular problem arises depends on how much modification of common provisions the Rules need to contain. We make a provisional proposal in relation to that issue later in this chapter (see paragraph 8.31 below).

Option 2 – Booklets: advantages and disadvantages

8.22 An advantage of the booklet approach is that, if properly executed, it provides an applicant for leave under a particular route, and a caseworker deciding his or her application, with all the material relevant to the case in one electronic or paper volume. As just mentioned, it has an advantage over the common provisions approach in circumstances where what would otherwise be a common provision needs to be modified for the category of application in question. Rather than including a provision modifying the common provision, the provision is simply included in the booklet in its modified form. Provisions, such as the requirement to hold an ATAS certificate, that apply to some but not all application routes, can be included in the booklets to which they apply and left out of others.

8.23 However, the booklet approach may not greatly reduce the amount of material that needs to be read and digested. Most of the common provisions would have to be replicated in each booklet, as would provisions that apply on the basis of the applicant's country of origin rather than their application route. These include visa requirements, tuberculosis screening and registering with the police. Many of these provisions may not apply in a particular applicant's case, or may apply only in part. Applicants would also still need to identify the requirements that apply to the type of leave they are seeking.

8.24 The main disadvantages of the booklet approach seem to us to be that, first, it generates significantly more text overall, owing to the need for a considerable amount of "common provision" material to be included in each booklet. This is less of a problem where the Rules are accessed online, but the laying and consideration in Parliament of statements of Rules in booklet form (and subsequently of changes to them) would be significantly more onerous for all involved.

8.25 Secondly, as experience shows, the duplication of material that is inherent in the booklet approach carries with it risks of unnecessary or inadvertent inconsistency. The existence of, for example, separate general grounds of refusal (or "suitability" requirements) in different booklets may be a source of temptation to "fine tune" the

requirements to an extent that creates unnecessary detail. Alternatively, when a policy decision is taken to update a particular provision, one or more booklets may be inadvertently overlooked.

8.26 In short, a booklet approach seems to us to be inherently more "high maintenance" than a single set of rules. Resources within the Home Office would need to be devoted to maintaining consistency between booklets.

Option 3 – Editorially produced booklets: advantages and disadvantages

8.27 The third option presented above would capitalise both on the advantages of a single set of Rules at the stage of laying in Parliament and on the advantages of booklets for the general user. The process of producing the booklets would be an editorial one, possibly requiring legal training. To the extent that it involved "customising" common provisions, it would involve giving effect to the modifying provision contained in the Rules as laid. This would have similarities with the editorial process of giving effect to amendments of legislation so as to produce an up-to-date version, as is done on legislation.gov.uk and commercial legal databases.

8.28 The disadvantages of option 3 seem to us to be the resources required for the editorial production of booklets and amended booklets, and the risk of errors in transposition. In the event of a discrepancy between a booklet and the Rules as laid in Parliament, the courts would in our view be likely to hold that an applicant could rely on whichever of the Rules as laid and booklet was more favourable to them. An editorially produced booklet could not legitimately add to the requirements of the Rules as laid, but might in other respects be held to engender a legitimate expectation that its terms could be relied on.

Provisional proposals and consultation questions

8.29 We provisionally propose that the issues discussed in chapter 7 and this chapter be tackled in the following ways.

8.30 First, chapter 7 has discussed the inconsistencies that duplication of subject-matter within the existing Rules has already produced. We provisionally propose that, as a necessary first step irrespective of the method of organisation of the Rules that is ultimately adopted, an audit of overlapping provisions should be undertaken. Where inconsistencies of language are identified, a policy decision should be taken as to whether a difference of effect is desirable. Where no difference of effect is desired, a common form of words for the provision (reflecting the stylistic approach that we provisionally propose in chapter 9) should be settled upon.

8.31 Secondly, once that task has been performed, it will be easier to see how much necessary "customising" of common provisions remains. That will help to inform the decision whether to use a single set of Rules or a booklet approach, since it will indicate the extent to which the problem identified in paragraph 8.21 above would arise in a single set of Rules. We therefore provisionally propose that an assessment be made of the amount of modification of common provisions that would be required in a single set of Rules.

8.32 Thirdly, in instances where a common provision is customised, we provisionally propose that the fact of the departure from the standard provision should be

highlighted in guidance and the reason for it explained. This would both operate as a check on unnecessary customisation and contribute to the overall clarity of the Rules by making such departures more transparent.

8.33 We also seek consultees' views on the three options canvassed in paragraphs 8.19 to 8.28 above.

Consultation Question 21.

8.34 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?

Consultation Question 22.

8.35 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?

Consultation Question 23.

8.36 Are there any advantages and disadvantages of the booklet approach which we have not identified?

Consultation Question 24.

8.37 Are there any advantages and disadvantages of the common provisions approach which we have not identified?

Consultation Question 25.

8.38 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?

DEFINITIONS

8.39 A final issue for consideration in our proposals for restructuring the Rules is how the common definitions should be dealt with. Definitions can be crucial to eligibility. However, the Rules fail to provide a straightforward and consistent approach to how definitions are positioned and presented.

8.40 Paragraph 6 in the Introduction to the Rules sets out a number of common definitions that apply throughout the Rules. Paragraph 6 is extremely long, providing often detailed definitions of over 150 terms. These definitions are not arranged alphabetically, making it difficult for users to locate the definition they need. For example, the list begins by defining "the Immigration Acts" whilst the definition of "administrative review" is provided towards the bottom of the list. Frequently, the only practical way to find a definition is through the "search in page" facility on a computer.

8.41 Definitions relevant to more than one immigration route are sometimes placed in a portion of the Rules dealing with one route only. For example, the definition of "visa nationals" in paragraph 6 of the Introduction to the Rules is "the persons specified in Appendix 2 to Appendix V: Visitors who need a visa for the United Kingdom for a visit or for any other purposes where seeking entry for 6 months or less."[383] A list of visa nationals is contained in the specified Appendix to Appendix V (Visitors), however, the list is also relevant for those applying under Tier 5 of the points-based scheme, making it misleading to locate it in Appendix V (Visitors).

8.42 In addition to the main definitions provision, further definitions are spread around the portions of the Rules dealing with particular immigration categories.[384]

8.43 We suggest that any successor provision to paragraph 6 in the new Rules be arranged in alphabetical order. We seek consultees' views on where definitions should be located in the Rules in future.

8.44 The alternatives seem to us to be (1) to place all definitions in a definitions section,[385] or (2) to confine the definitions section to definitions of the more widely used terms and to introduce other definitions within the Part or Parts in which the terms are used. These alternatives apply whether the Rules are presented as a single set of Rules or in booklet form, the difference being that a booklet would only contain definitions of terms that were used in the booklet in question.

8.45 Providing a list of common definitions at the beginning of the Rules (or booklet) clearly has advantages in terms of consistency and minimising repetition. However, the non-expert reader reading an individual Part of the Rules may overlook the fact that a term is defined in the definitions section. We provisionally regard signposting as a possible solution to that difficulty.

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383 Introduction, para 6.

384 For example, Part 6A (Points-based system) separates definitions for each Tier and does not give a clear subheading to indicate where the definitions are. See also the definitions contained in numbered paragraphs within section GEN of Appendix FM. Specific definitions appear as part of the relevant category in Part 7 (Other categories), for example defining 'Gurkha' (para 276E) and 'relevant Afghan citizen' (para 276BB1).

385 In para 8.10 above we provisionally allocate this to Part 1 of the Rules.

8.46 We are open to suggestions as to the method of identification. One possibility is to use bold type, as Appendix EU does for its defined terms. This technique can, however, generate pages cluttered with an unattractive assortment of bold and plain text, and can make reading difficult for some readers. In our specimen redrafting work[386] we have opted for the symbol #, but are open to alternative suggestions.

8.47 We provisionally propose that:

(1) any definitions section should be arranged alphabetically;

(2) all definitions should be grouped in it and should not be spread across Parts or across a booklet. We welcome views as to whether this approach should apply equally to definitions of terms only used in one or a few Parts of the Rules; and

(3) defined terms (whether defined in the definitions section or elsewhere) should be identified as such in the text so as to make the reader aware that the term is a defined term.

8.48 But we believe that reforms could go further than this, particularly to cater for the needs of lay users, and how the Rules are used online. A problem with placing definitions in one part of the Rules is that applicants find it off-putting to cross-refer between Parts. To get around this, it might be possible to have definitions in one Part of the Rules in the paper version and yet organise definitions in a different format online.

8.49 In an online version of the Rules, hyperlinks could be used to take the reader either to the definitions section or conceivably to the place in the definitions section where the term in question is defined. Alternatively, technology permitting, "hover boxes" could display the definition over the text. This would eliminate the need to cross-refer entirely.

Consultation Question 26.

8.50 We provisionally propose that:

(1) definitions should be grouped into a definitions section, either in a single set of Immigration Rules or in a series of booklets, in which defined terms are presented in alphabetical order;

(2) terms defined in the definitions provision should be identified as such by a symbol, such as # when they appear elsewhere in the text of the Immigration Rules.

Do consultees agree?

386 See chapter 11.

Chapter 9: Identifying and organising material within Parts

9.1 This chapter and the next consider how the complexity of the Immigration Rules could be reduced by a new approach to how their Parts are identified, organised internally and drafted. The present chapter begins by considering the titles and subtitles currently given to Parts and Appendices, before moving to matters of internal organisation: subheadings, overviews and contents pages, the numbering system and the location of requirements and definitions within the Parts. The following chapter discusses issues of textual drafting style and canvasses the adoption of a style guide for drafting the Rules, intended to cover the various issues discussed in these two chapters.

9.2 Chapter 11 then introduces our specimen redrafting work, set out in appendices 3 and 4 to this paper, which attempts to illustrate the operation of our suggested drafting principles.

TITLES, SUBTITLES AND SUBHEADINGS

9.3 As presented on the Gov.uk website, the Rules have an index running to 12 pages and listing not only the Parts and Appendices but also the titles of sections within them. Some of the titles in the Index are extremely long (running to 2 or 3 lines). For example, Part 9 is entitled:

> Part 9 - General grounds for the refusal of entry clearance, leave to enter, leave to remain, variation of leave to enter or remain and curtailment of leave in the United Kingdom (paragraphs A320 to 324).[387]

9.4 Each Part and Appendix has a title in bold print followed by a (usually longer) subtitle. Sometimes the title given in the Index corresponds to the title at the head of the Part or Appendix;[388] sometimes it corresponds to the subtitle.[389] In consequence (and somewhat confusingly), Parts often have one title given in the Index and a different title given in the Part itself.[390]

9.5 The titles themselves can be confusing. For example, there are currently two Parts of the Rules (Part 11 and Part 11B) entitled "Asylum". These are separated by a Part 11A entitled "Temporary protection". Part 12, which deals with procedure and rights of appeal in certain human rights or asylum claims only, is simply entitled (and subtitled) "Procedure and Rights of Appeal", suggesting a broader application than the Part in fact has.

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387 The Index also includes a hyperlink to the online text of the Part or Appendix.

388 For example, Appendix 6.

389 For example, Part 9.

390 For example, in Part 9 itself, the title is “Immigration Rules part 9: grounds for refusal”.

9.6 Part 2 (Transitional provisions) has the misleading subtitle "Transitional provisions Part 2 and Appendix V: Immigration Rules for Visitors". This suggests a narrower application than Part 2 has. The transitional provisions also apply to Part 3 (Students), and Tier 4 (Child) students under Part 7 (Other categories). Users are not alerted to this by the Part's title or subtitle.

9.7 Parts are divided into subheadings, which can also be very long. For example, Part 7 (Other categories) includes the following subheading:

> Spouses, civil partners, unmarried or same-sex partners of persons settled or seeking settlement in the United Kingdom in accordance with paragraphs 276E to 276Q (HM Forces rules) or of members of HM Forces who are exempt from immigration control under section 8(4)(a) of the Immigration Act 1971 and have at least 5 years' continuous service.

9.8 Some of the Appendices have similarly lengthy titles. For example, in the Index to the Rules Appendix 6 was, until recently, titled:

> Disciplines for which An Academic Technology Approval Scheme certificate from the Counter-Proliferation Department of the Foreign and Commonwealth Office is required for the purpose of Tier 4 of the Points Based System.

9.9 This did not correspond either to the title[391] or the subtitle[392] as given in the Appendix itself.

Discussion

9.10 Titles and subheadings are important because they help people to find what they are looking for. However, many of those used currently in the Rules and Appendices tend to confuse rather than assist accessibility. There is also no consistent approach to the labelling and numbering of titles and subheadings.

9.11 To address this, we provisionally propose that the following principles should be applied in the future:

(1) there should be one title, not a title and a subtitle;

(2) the titles given in the Index and the Rules should be consistent;

(3) titles and subheadings should give as full an explanation of the contents as possible, consistently with keeping them reasonably short;

(4) titles and subheadings should not run into a second line unless necessary; and

(5) titles and subheadings should avoid initials and acronyms.

9.12 We would also welcome views on whether there are too many subheadings – including some placed within Rules. For example, paragraph 320 in Part 9 (General

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391 "Academic subjects that need a certificate".

392 "Academic subjects that need a certificate from the Foreign and Commonwealth Office". The titles have now been amended.

grounds for refusal) follows on from unrelated text without a heading of its own but contains within it the subheadings "Grounds on which entry clearance or leave to enter the United Kingdom is to be refused" and "Grounds on which entry clearance or leave to enter the United Kingdom should normally be refused". We provisionally consider that where a subheading is desirable, there should also be a new paragraph.

9.13 Our provisional proposals on titles and subheadings are given effect in the drafting guide at the end of chapter 10.

Consultation Question 27.

9.14 We provisionally propose that the following principles should be applied to titles and subheadings in the Immigration Rules:

(1) there should be one title, not a title and a subtitle;

(2) the titles given in the Index and the Rules should be consistent;

(3) titles and subheadings should give as full an explanation of the contents as possible, consistently with keeping them reasonably short;

(4) titles and subheadings should not run into a second line unless necessary; and

(5) titles and subheadings should avoid initials and acronyms.

Do consultees agree?

Consultation Question 28.

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

OVERVIEWS AND CONTENTS PAGES

9.16 The Rules have a general index page which is presented before the introduction. This sets out the contents and paragraph numbers of the different sections which make up the Rules. None of the individual Parts of Appendices have their own contents pages.[393]

[393] However, in the online version of the Immigration Rules, a limited description of the contents is placed under the subheadings.

9.17 Some of the Parts and Appendices include a summary at the beginning to give the reader an overview of what follows. For example, GEN.1.1. of Appendix FM (Family members) recites that:

> This route is for those seeking to enter or remain in the United Kingdom on the basis of their family life with a person who is a British Citizen, is settled in the United Kingdom, or is in the United Kingdom with limited leave as a refugee or person granted humanitarian protection (and the applicant cannot seek leave to enter or remain in the United Kingdom as their family member under Part 11 of these Rules). It sets out the requirements to be met and, in considering applications under this route, it reflects how, under Article 8 of the Human Rights Convention, the balance will be struck between the right to respect for private and family life and the legitimate aims of protecting national security, public safety and the economic well-being of the United Kingdom; the prevention of disorder and crime; the protection of health or morals; and the protection of the rights and freedoms of others (and in doing so also reflects the relevant public interest considerations as set out in Part 5A of the Nationality, Immigration and Asylum Act 2002). It also takes into account the need to safeguard and promote the welfare of children in the United Kingdom, in line with the Secretary of State's duty under section 55 of the Borders, Citizenship and Immigration Act 2009.

Discussion

9.18 In our view, overviews can be helpful when used appropriately. An overview can give a panoramic view of the content that follows and draw out themes and relationships between provisions. An overview can also explain how the Part fits into the legislative landscape, for instance, by including signposts to other relevant provisions. However, there are dangers to be avoided. For example:

(1) an overview that merely repeats the headings is unlikely to be helpful;

(2) if treated as an aid to interpretation, an overview might be given some unintended effect by the courts - although this danger would be minimised by ensuring that the overview is accurate and drafted in a way which makes it clear that it is intended merely as a signpost.[394] The possibility that overviews may be used as a guide to interpret the Rules should be appreciated by officials tasked with drafting the Rules; and

(3) when amending the Rules, drafters might overlook that the overview will also need to be amended.

9.19 Across the statute book there has been a move to include more overviews. We consider that the addition of overviews at the beginning of Parts would help both lawyers and lay users to better access and understand the Rules. Moreover, because

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394 Office of the Parliamentary Counsel, *Drafting Guidance* (2018) para 3.2.6, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/727629/drafting_guidance_July_2018.2.pdf (last visited 17 August 2018).

the Rules are not primary legislation, there may be less of an issue about including "inert material" in them.[395]

9.20 It would be possible expressly to state that overviews are not an aid to interpretation, but we have reservations as to whether this would be effective means of preventing judges from using them in this way.

9.21 We welcome views from consultees on whether an overview would be a helpful addition at the beginning of each Part.

9.22 In addition (or as an alternative) to an overview it would be possible to provide a table of contents at the beginning of some, or all, of the individual Parts. We would welcome views on whether the inclusion of tables of contents would be a helpful innovation. Our provisional proposals on overviews and contents pages are picked up in the drafting guide which is included at the end of chapter 10.

Consultation Question 29.

9.23 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?

Consultation Question 30.

9.24 Do consultees have a preference between overviews and tables of contents at the beginning of Parts?

NUMBERING

9.25 In this section we consider how the numbering of the Rules could be reformed to assist clarity.

9.26 The numbering system currently used in the Rules and some of the Appendices is frequently criticised:

(1) the numbering of the Rules is sequential and does not re-start in each Part of the Rules. In consequence the paragraph numbering runs to over 400 numbers (frequently accompanied by letters), and it is not possible to identify from the numbering the Part to which any given paragraph belongs;

[395] R Heaton, *Speech on Innovation and Continuity in Law-making*, https://www.gov.uk/government/speeches/innovation-and-continuity-in-law-making (last visited 30 October 2018).

(2) numbered paragraphs are sometimes not set out in numerical order. For example, paragraph 353 of the Rules appears after paragraph 361;

(3) there is no consistency on how sub-paragraphs are arranged. Sometimes they are given lower case letters and sometimes lower case Roman numerals.

9.27 The Appendices to the Rules adopt varying approaches to their internal numbering. For example, some of the Appendices use a numerical numbering system;[396] others have no numbering system at all.[397] Other Appendices are arranged by a combination of letters followed by numbers.

9.28 Appendix FM (Family members) uses a detailed system of lettering followed by numbers; for example, "GEN" is used for provisions of general application, "ECP" for entry clearance as a partner and "LTRP" for leave to remain as a partner. These are sometimes preceded by a further letter to indicate the aspect of entry clearance or leave to remain that is dealt with. This is helpful in itself, but its usefulness is arguably outweighed by the difficulty it creates in finding a particular provision; in order to do so, the reader has to master the sequence of the series of letters. It has also proved difficult to operate the system in a consistent manner. For example, "R-LTRP" stands for "Requirements for limited leave to remain as a partner" whereas, for entry clearance applications, the requirements section is coded "EC-P", with no corresponding indication that the paragraph contains requirements.

9.29 The use of numbers and letters to identify the Appendices has also become somewhat confusing. The Appendices were originally numbered, but many of the original appendices have since been deleted. The ones that remain are Appendix 2, Appendix 6 and Appendix 7. When the points-based system was introduced, the associated Appendices were not numbered but given letters in alphabetical order. These are now interspersed with more recent additions identified by initials indicating their subject-matter, such as Appendix FM, Appendix V, Appendix AR and Appendix SN.[398] One Appendix has no number or letter, but is just "Appendix Armed Forces".

9.30 It is not clear that the intention behind initials such as FM and AR – to make it easier to identify the subject matter of the Appendix in question – has been realised. It is not necessarily apparent to those unfamiliar with the Rules what the initials stand for and the approach is not used consistently; for example, Appendix K relates to the "shortage occupation list".

9.31 It seems clear to us that the way in which the Rules and Appendices are numbered has become confusing and inconsistent. They have become extremely difficult, and in some places almost impossible, to navigate. An applicant directed to a Rule by a form or a notice, or a lawyer attempting to take a judge to a provision, faces considerable difficulty.

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396 For example, Appendix A (Attributes).

397 For example, Appendices 2 (Police Registration), 6 (Academic subjects that need a certificate) and 7 (Overseas workers in private households).

398 Appendix FM relates to Family Members, Appendix V relates to Visitors, Appendix AR relates to Administrative Review, and Appendix SN relates to the Service of Notices.

A possible new numbering system for the Rules

9.32 We seek views on the following system for the Rules themselves:

(1) paragraphs should be numbered in a numerical sequence;

(2) letters should be removed from the numbering system (at least until insertions are needed);

(3) the numbering should re-start in each Part;

(4) for the purposes of cross-references, it should be possible to identify from the numbering system the Part or Appendix within which a paragraph falls. This could be done by a direct reference to the Part in which it is located (for instance, paragraph 1 (Part 8)), or through the use of multilevel numbering commencing with the Part number, such as 8.1, 8.2 and so on);

(5) there should be a three-level numbering system (such as 8.1.1, 8.1.2 and so on) in order to separate different sections within a Part and to reduce the disruption caused by insertion of additional sections or groups of paragraphs;[399] and

(6) letters should be used for sub-paragraphs ((a), (b), (c) and so on), and Roman numerals for any sub-sub-paragraphs in the same paragraph (although these should be avoided where possible).

Numbering of Appendices

9.33 We consider it highly desirable that there should be a uniform system for identifying appendices. Any of the four current approaches could in theory be used. We have provisionally proposed that the function of appendices in future should be to contain lists rather than narrative text, and that they should be reduced in number.[400] We are not currently persuaded that the use of initials such as FM or AR adds sufficient clarity to justify departing from a sequential system, and doubt that it would be satisfactory to identify appendices by name only (such as Armed Forces). We provisionally propose a numerical system.

When to introduce re-numbering

9.34 An obvious point at which to introduce new numbering is the re-organisation of the Rules. Such an exercise will inevitably take time to complete. In the meantime, introducing a new numbering system as and when parts of the present Rules are amended would be likely only to amount to modest progress towards a more rational numbering system, and would add one more system to the profusion of systems already found. We therefore seek views on whether there would be merit in re-numbering the present Rules and Appendices as an interim measure.

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399 See paras 9.35 to 9.37 below.

400 See our proposed list of topics at para 8.10 above.

Numbering of subsequently inserted Rules

9.35 Many stakeholders have told us that numbering of Rules by a combination of letters and numbers hampers locating the Rule in the text in the way that arranging the Rules in a numerical order allows. Nevertheless, we do not think it possible to exclude the use in future of combinations of numbers and letters when additional Rules are inserted into existing text. The only alternative is that, when new paragraphs are added, all subsequent paragraphs are renumbered. Amendment to the Rules is inevitable as and when policy changes.

9.36 We suggest the following numbering system (which is based on standard legislative drafting practice[401]) for future insertions into the Rules:

(1) when inserting a new whole paragraph at the beginning of a Part or Appendix, the number should be preceded by a letter, starting with "A" (A1, B1, C1 and so on). A rule inserted before "A1" (or "ai") is "ZA1" or ("zai");

(2) in the case of lettered paragraphs, new paragraphs inserted before paragraph (a) should be (za), (zb) and so on, and paragraphs inserted before (za) should be (zza), (zzb) and so on;

(3) where adding a provision at the end of an existing series of provisions of the same kind (for example, a new paragraph at the end of a Part or a sub-paragraph at the end of a paragraph), the numbering should continue in sequence;

(4) the following should apply when inserting whole provisions between existing paragraphs:

(a) new paragraphs inserted between 1 and 2 should be 1A, 1B, 1C and so on;

(b) new paragraphs inserted between 1A and 1B should be 1AA, 1AB, 1AC and so on;

(c) new paragraphs inserted between 1 and 1A should be 1ZA, 1ZB, 1ZC and so on (and not 1AA and so on); and

(d) new provisions inserted between 1A and 1AA should be 1AZA, 1AZB, 1AZC and so on;

(5) a lower level identifier should not be used unless necessary (for example, a new provision between 1AA and 1B should be 1AB not 1AAA, however a new provision between 1AA and 1AB should be 1AAA);

(6) the above should apply equally to sub-paragraphs with Roman numerals and lettered paragraphs, for example:

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401 See, for example, Office of the Parliamentary Counsel, *Drafting Guidance (*2018) para 6.4, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/727629/drafting_guidance_July_2018.2.pdf (last visited 17 August 2018).

(a) new sub-paragraphs between sub-paragraphs (i) and (ii) should be (ia), (ib), (ic) and so on;

(b) new paragraphs between paragraphs (a) and (b) should be (aa), (ab), (ac) and so on; and

(c) new paragraphs between paragraphs (a) and (aa) should be (aza), (azb), (azc) and so on; and

(7) after Z, the following sequence should be used: Z1, Z2, Z3 and so on (for example, after paragraph 360Z the sequence should be 360Z1, 360Z2 and so on, and after paragraph (z) the sequence should be (z1), (z2), (z3) and so on).

9.37 We seek views on whether a three-level numbering system suggested in the section above (for example 8.1.1, 8.1.2 and so on, followed by 8.2.1, 8.2.2 and so on), would assist in reducing the disruption caused by insertions. Under the present system, if a large number of paragraphs are inserted, each of them has to be given a number that includes letters. This results in a profusion of letters.[402] Under a three-level system, a newly inserted section could have a letter added at level 2 (for example, new paragraphs 8.1A.1, 8.1A.2 and so on).

9.38 We also seek views on whether re-numbering exercises should be undertaken periodically, where particular parts of the Rules have become cluttered with inserted text.

[402] The use of combined numbers and letters confuses and obscures the location of many Rules. They are also not logically ordered: for example, one sequence of paragraphs is 276A, 276A0, 276A00, 276A1, 276A2, 276A3, 276A4, 276B, 276C, 276D, 276ADE, 276BE, 276CE, 276DE.

Consultation Question 31.

9.39 We provisionally propose the following numbering system for the Immigration Rules:

(1) paragraphs should be numbered in a numerical sequence;

(2) the numbering should re-start in each Part;

(3) it should be possible to identify from the numbering system the Part within which a paragraph falls, the use of multilevel numbering commencing with the Part number;

(4) the numbering system should descend to three levels (1.1.1 and so on) with the middle number identifying a section within a Part; and

(5) letters should be used for sub-paragraphs and lower case Roman numerals for sub-sub-paragraphs.

Do consultees agree?

Consultation Question 32.

9.40 We provisionally propose that Appendices to the Immigration Rules are numbered in a numerical sequence.

Do consultees agree?

Consultation Question 33.

9.41 We provisionally propose that text inserted into the Immigration Rules should be numbered in accordance with the following system:

(1) new whole paragraphs at the beginning of a Part should have a number preceded by a letter, starting with "A" (A1, B1, C1 and so on). A rule inserted before "A1" should be "ZA1";

(2) new lettered sub-paragraphs, inserted before a sub-paragraph (a) should be (za), (zb) and so on, and paragraphs inserted before (za) should be (zza), (zzb) and so on;

(3) where text is added to the end of existing text at the same level, the numbering should continue in sequence;

(4) new whole paragraphs inserted between existing paragraphs should be numbered as follows:

(a) new paragraphs inserted between 1 and 2 should be 1A, 1B, 1C and so on;

(b) new paragraphs inserted between 1A and 1B should be 1AA, 1AB, 1AC and so on;

(c) new paragraphs inserted between 1 and 1A should be 1ZA, 1ZB, 1ZC and so on (and not 1AA and so on); and

(d) new provisions inserted between 1A and 1AA should be 1AZA, 1AZB, 1AZC and so on;

(5) a lower level identifier should not be added unless necessary; and

(6) after Z or z, the sequence Z1, Z2, Z3 and so on or z1, z2, z3 and so on should be used.

Do consultees agree?

Consultation Question 34.

9.42 Should the current Immigration Rules be renumbered as an interim measure?

Consultation Question 35.

9.43 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?

LOCATION OF REQUIREMENTS

9.44 In this section, we look at a further aspect of internal organisation of Parts: the location of the requirements to be met by applicants within the text dealing with a particular immigration category.

9.45 Examples of difficulties include the eligibility criteria being presented in different places within a Part or Appendix, which lead to the user having to follow a trail within that Part or Appendix, as well as poor signposting so that the requirements are difficult to find or easy to miss.

Ordering of provisions

9.46 One example of convoluted internal drafting is Appendices FM (Family Members) and FM-SE (Family Members – Specified evidence), particularly in respect of the financial requirements. Unlike the related guidance for Home Office case workers, Appendix FM-SE has no clear headings separating out the different sources of income that can be counted or, for each such source, which income will be eligible and how such income should be calculated and evidenced. The relevant provisions are instead spread across long sections of text.[403]

9.47 The lack of headings/subheadings or cross-references means that users are often required to read through long sections to pick out relevant provisions and to check that there are no further qualifications or caveats further down the text. Users can therefore end up reading a significant amount of text which does not apply to their specific situation.

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[403] At the beginning, introductory paras (A to C and E) explain how Appendix FM-SE works. Para D deals with the evidential flexibility that will apply to Appendix FM-SE. Para 1 has no heading, and is very long, containing detailed sub-paragraphs from (a) to (o). There are no subheadings between these sub-paragraphs. It contains what are in effect 'common provisions' which apply to multiple (but not all) income sources. It covers, for example, 1(a) and (aa) on the format of financial statements and which banks/accounts are eligible, (bb) format of payslips, (h) the requirement that documents be original, (j) provisions on translations, and (l) how evidence should be dated. It also has numerous provisions on which aspects of income can be counted across multiple sources (for example, 1(b) stipulating which third party support can be counted). There follows a headed section entitled "Evidence of financial requirements under Appendix FM", which, again, has no subheadings, but is broken up between A1 and 12B according to the different types of sources of income. Finally, from paras 13 to 21, is a headed section entitled 'Calculating gross income under Appendix FM', which contains very important (effectively eligibility) requirements as to how income should be calculated in each of the different eligible sources. Again, there are no subheadings visually to distinguish the provisions according to the different income sources.

9.48 The difficulty can be illustrated by the example of the most straightforward ‘‘five-year route to settlement” case.[404] Even where the sponsor of the application has been in salaried employment throughout the relevant period, the applicant will still need to check the following provisions in Appendices FM and FM-SE to check eligibility and determine what evidence they need to provide (and probably in this order):

(1) the provisions in Appendix FM setting out the relevant minimum income threshold and whose income can be counted;

(2) the introductory paragraphs A to E and paragraph A1 of Appendix FM-SE;

(3) paragraphs 13 to 21, of Appendix FM-SE setting out how the amount of income in their category should be calculated;

(4) paragraphs 2 to 6 of Appendix FM-SE setting out what the specified evidence is for their category; and

(5) the over-arching provisions in paragraph 1 of Appendix FM-SE, such as those stipulating the specified format for payslips and bank statements.

9.49 In contrast to this, the relevant guidance sets out the requirements in a more structured and easy to use way, in the main by reference to each income source. The guidance deals successively with who needs to meet the financial requirement, what the amount of the financial requirement is, how it can be met (including the permitted sources of income and savings, the time periods and permitted combinations of sources and the evidence required. It then lists the sources, dividing them into lettered categories that are then dealt with in more detail in subsequent chapters.[405] It is a much more accessible source of information about the requirements than Appendices FM and FM-SE themselves.

9.50 A similarly scattered approach is seen in the way that the requirements for the various points-based system categories are organised. Tables 4, 5 and 6 of Appendix A set out the points scored for attributes for the Tier 1 (Entrepreneur) category at the initial, extension, and indefinite leave to remain stages. There are followed by a large number of paragraphs which define or supplement terms used in the tables. In general, these provide additional substantive requirements and specified evidential requirements, for example, in relation to “available money”, “UK business”, and qualifications on what constitutes acceptable investment.[406] Terms used within those definitions are further defined and/or qualified in other paragraphs.[407]

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404 For example, as in the case of the partner of a British citizen who meets all the relevant suitability and eligibility requirements of the Immigration Rules without consideration of exceptional circumstances.

405 See Immigration Directorate Instruction Appendix FM 1.7: financial requirement, and form FLR(M).

406 Appendix A, para 39(a).

407 See, for example, para 46 in Appendix A, which adds a definition of “new business” for the purposes of, among others, para 43.

DEFINITIONS

9.51 As noted in chapter 8, when terms are defined in specific Parts they are frequently not grouped together.[408] We have provisionally proposed that definitions should be grouped into definition sections. The next chapter considers further issues raised by definition provisions. We look at how they are presented, and instances of their use as a vehicle for importing or qualifying requirements of eligibility for immigration leave.

[408] For example, Part 6A (Points-based system) contains separate definitions for each Tier and does not give a clear subheading to indicate where the definitions are.

Chapter 10: Drafting style

10.1 This chapter considers the various aspects of the method of expression used in the Immigration Rules. We begin with two issues concerning definition provisions: their presentation and their use as a vehicle for importing or qualifying requirements of eligibility for immigration leave. We then turn to discuss various aspects of the cross-referencing between provisions that is a prominent feature of the Rules, including its apparent use as a means of signposting other provisions. Thirdly, we discuss the advantages and disadvantages of repetition within portions of the Rules. Finally, we consider the introduction of a style guide for drafters of the Rules.

DEFINITIONS

10.2 We have discussed the future location of definitions in chapter 8 as part of the overall restructuring of the Rules. The present chapter is concerned with the way in which they are presented and expressed. Currently, the method of presentation of definitions varies. Paragraph 6 in the Introduction to the Rules adopts the standard legislative drafting device whereby a list of defined terms is set out within the same provision (see the box below).

> **Interpretation**
>
> In these Rules the following interpretations apply:
>
> "the Immigration Acts" has the same meaning as it has in the Interpretation Act 1978.
>
> "the 1993 Act" is the Asylum and Immigration Appeals Act 1993.
>
> "the 1996 Act is the Asylum and Immigration Act 1996.
>
> "the 2006 Regulations" means the Immigration (European Economic Are) Regulations 2006.

10.3 Appendix 1 to Appendix V (Visitors) adopts a similar style to paragraph 6 when listing its definitions.

10.4 In contrast, Appendix FM (Family members) adopts a different style; definitions are set out in separate paragraphs, with some apparently unconnected definitions being grouped together in paragraphs (see the box below).

Definitions

GEN.1.2. For the purposes of this Appendix "partner" means-

(i) the applicant's spouse;

(ii) the applicant's civil partner;

(iii) the applicant's fiancé(e) or proposed civil partner; or

(iv) a person who has been living together with the applicant in a relationship akin to a marriage or civil partnership for at least two years prior to the date of application, unless a different meaning of partner applies elsewhere in this Appendix.

GEN.1.3. For the purposes of this Appendix

(a) "application for leave to remain" also includes an application for variation of leave to enter or remain by a person in the UK;

(b) references to a person being present and settled in the UK also include a person who is being admitted for settlement on the same occasion as the applicant; and

(c) references to a British Citizen in the UK also include a British Citizen who is coming to the UK with the applicant as their partner or parent.

10.5 In chapter 8 we provisionally proposed a single definitions section in which the defined terms are presented in alphabetical order, rather than (as at present) a general definitions provision in paragraph 6 of the Introduction and further defined terms elsewhere in the Rules. We also provisionally proposed that defined terms should be identified by a symbol, such as #. In chapter 14 we discuss presentation techniques available in online presentation, such as displaying the text of a definition in a "hover box".

Definitions containing substantive requirements

10.6 It is a frequent occurrence in the Rules that provisions presented as definitions contain substantive eligibility requirements. Some of the definitions in paragraph 6 of the Introduction to the Rules are not definitions at all but requirements which impact on the applicant's entitlement to stay in the United Kingdom. For example, various Rules within Part 6A (Points-based system) provide for leave under the points-based scheme to be subject to a condition restricting the migrant to particular work together with possible "supplementary employment". "Supplementary employment" for the purposes of Part 6A is defined in paragraph 6 of the Introduction as:

other employment in a job which appears on the Shortage Occupation List in Appendix K, or in the same profession and at the same professional level as that which the migrant is being sponsored to do provided that:

(1) the migrant remains working for the Sponsor in the employment that the Certificate of Sponsorship Checking Service records that the migrant is being sponsored to do,

(2) the other employment does not exceed 20 hours per week and takes place outside of the hours when the migrant is contracted to work for the Sponsor in the employment the migrant is being sponsored to do.

10.7 The effect of the definition in paragraph 6 of the Introduction is to attach specific requirements as to the type, timing and period of that employment. The provisos in the definition do, as a matter of language, go to the supplementary character of the additional employment, but the restriction to jobs on the Shortage Occupation List can hardly be said to do so. More fundamentally, the message that any additional work will be subject to the conditions set out in the definition is not signalled clearly to the applicant.

10.8 In the new Appendix EU, 13 out of the 19 pages are devoted to definitions, which contain numerous substantive eligibility criteria. It is likely that this approach was taken to keep the "main" rules (for example on eligibility, suitability and validity) uncluttered and to reduce repetition of definitions of key concepts which crop up in various places.

Discussion

10.9 The Office of the Parliamentary Counsel's Drafting Guidance gives the following advice:

> It is usually best to avoid using a definition to make operative provision since one would not usually expect to find operative provision in a definition.
>
> EXAMPLE (to avoid)
>
> "information notice" means a notice, issued by the Regulator to a registered person, requiring the registered person to send, within the period of 30 days beginning with day on which the notice is issued, a return to the Regulator containing such information as is specified in the notice.
>
> In this example the definition ought to be restructured as a series of operative provisions: (1) conferring power on the Regulator to require a person to provide information, and (2) imposing a duty on a recipient to comply within 30 days. An "information notice" could then be defined as a notice issued by the regulator under (1).[409]

[409] Office of the Parliamentary Counsel, *Drafting Guidance* (2018) paras 4.1.8 to 4.1.9, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/727629/drafting_guidance_July_2018.2.pdf

10.10 We provisionally agree with the position taken in the Office's guidance.[410] We provisionally propose that definitions should be used to clarify the meaning of terms and should not be used as a vehicle for importing requirements.

Consultation Question 36.

10.11 We provisionally propose that definitions should not be used in the Immigration Rules as a vehicle for importing requirements.

Do consultees agree?

CROSS-REFERENCING

10.12 One of the major barriers for those seeking to navigate and understand the Rules is the extensive and complex use of cross-referencing. Many of the Rules cannot be read in isolation, but only after locating and understanding several other Rules to which a particular Rule refers.

10.13 For example, paragraph E-ECP.3.1. in Appendix FM (Family members) requires that, to be eligible for entry clearance as a partner, an applicant must have a "specified" gross annual income of at least £18,600.[411] This directs the reader to Appendix FM-SE because paragraph GEN.1.4. of Appendix FM states, "In this Appendix "specified" means specified in Appendix FM-SE", but the signposting to Appendix FM-SE is not very clear.

10.14 Appendix FM-SE then sets out how gross annual income is to be calculated. Paragraph 13(b) provides that:

> Where the person is in salaried employment in the UK at the date of application and has been employed by their current employer for less than 6 months (or at least 6 months but the person does not rely on paragraph 13(a)), their gross annual income will be the total of:
>
> (i) the gross annual salary from employment as it was at the date of application;
>
> (ii) the gross amount of any specified non-employment income (other than pension income) received by them or their partner in the 12 months prior to the date of application; and
>
> (iii) the gross annual income from a UK or foreign State pension or a private pension received by them or their partner …

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410 Both the example (to avoid) text and the restructured text were analysed using a readability consensus calculator. The reader's age for the example text was "college graduate", while the restructured text scored a lower reader's age of 15-17 years. See http://www.readabilityformulas.com/ (last accessed 10 December 2018).

411 See, for example, para E-ECP.3.1.

10.15 These can really only be considered as substantive criteria – requirements as to acceptable forms of income –not a matter of evidence. The location of such substantive criteria in the Appendix on specified evidence sends the reader on a trail through the various provisions and could have the result that they are overlooked.

10.16 Appendix FM-SE (Family members – specified evidence) itself contains extensive cross-referencing in most paragraphs. Paragraph A1 of Appendix FM-SE (set out in the box below) is typical of this general approach.

> A1. To meet the financial requirement under paragraphs E-ECP.3.1., E-LTRP.3.1., E-ECC.2.1. and E-LTRC.2.1. of Appendix FM, the applicant must meet:
>
> (a) The level of financial requirement applicable to the application under Appendix FM; and
>
> (b) The requirements specified in Appendix FM and this Appendix as to:
>
> (i) The permitted sources of income and savings;
>
> (ii) The time periods and permitted combinations of sources applicable to each permitted source relied upon; and
>
> (iii) The evidence required for each permitted source relied upon.

10.17 This is in our view an example of excessive cross-referencing; paragraph A1 does not need to itemise the provisions in Appendix FM (Family members) that contain financial requirements. This superfluous detail obscures the simple fact that paragraph A1 is relevant to any provision of Appendix FM that sets a financial requirement.

10.18 The Rule criticised for its "rebarbative" drafting by Lord Justice Underhill in *Singh v Secretary of State for the Home Department*[412] is contained in paragraph A277C in Part 8 (Family members), and remains in force today (with an additional cross-reference inserted). It governs transitional applications for leave to enter or remain based on family life and is set out below:

> Subject to paragraphs A277 to A280B, paragraph 276A0 and paragraph GEN.1.9. of Appendix FM of these Rules, where the Secretary of State deems it appropriate, the Secretary of State will consider any application to which the provisions of Appendix FM (family life) and paragraphs 276ADE to 276DH (private life) of these Rules do not already apply, under paragraphs R-LTRP.1.1.(a), (b) and (d), R-LTRPT.1.1.(a), (b) and (d) and EX.1. of Appendix FM (family life) and paragraph 276ADE(1) (private life) of these Rules. If the applicant meets the requirements for leave under those provisions (except the requirement for a valid application), the applicant will be

412 *Singh v Secretary of State for the Home Department* [2015] EWCA Civ 74, [2015] WLR(D) 66 at [59]. See para 1.5 above.

> granted leave under paragraph D-LTRP.1.2. or D-LTRPT.1.2. of Appendix FM or under paragraph 276BE(1) of these Rules.

10.19 There is nothing technically wrong with this drafting in the sense that it does not lead to an erroneous result. However, the reasons why the court criticised it are clear. This drafting is complex in its wording and construction. It is also an example of how the drafting style of the Rules often leads the reader through a labyrinth of provisions. To find out the effect of the Rule, the reader has first to read 5 pages of Rules to which the opening words make the Rule subject (anomalously including this Rule itself). The reader must then consult Appendix FM (Family members) and paragraphs 276ADE to 276DH of the Rules to find out whether or not they already apply. Finally, the reader is taken to nine Rules that, in the light of this Rule, the Secretary of State will apply.

10.20 The effect of the Rule is broadly that any application for leave to remain made under any provision of the Rules may be considered under the provisions for leave to remain on the basis of private life and family life in Part 7 and Appendix FM (Family members). This could have been stated more shortly.

10.21 Another example is paragraph GEN.1.9.(b) in Appendix FM, which reads:

> where an application or claim raising Article 8 is made in any of the circumstances specified in paragraph GEN.1.9.(a), or is considered by the Secretary of State under paragraph A277C of these rules, the requirements of paragraphs R-LTRP.1.1.(c) and R-LTRPT.1.1.(c) are not met.

10.22 Paragraph GEN.1.9(a) waives the requirement to make a valid application in the case of certain claims advanced on the basis of Article 8 (private or family life) of the ECHR. Paragraph A277C is the Rule referred to in paragraphs 10.18 to 10.20 above. Paragraphs R-LTRP.1.1.(c) and R-LTRPT.1.1.(c) contain the requirements for limited leave to remain as a partner and as a parent respectively. In both cases these are stated as being that the applicant meets the suitability and eligibility requirements.

10.23 The effect of paragraph GEN.1.9.(b) is that an application made in the circumstances envisaged in paragraph A277C or paragraph GEN.1.9.(a) is considered under the exception rules in Section EX. Instead of directing the reader to the paragraphs that do apply in such a case, the paragraph artificially deems the applicant not to meet suitability of eligibility criteria that may in fact be met. This is unhelpful to an understanding of the effect of the provision.

Discussion

10.24 In our provisional view, these drafting techniques hinder accessibility and should be avoided. We propose first that, where possible, clauses should be self-standing, avoiding cross-references to other paragraphs unless strictly necessary.

10.25 Secondly, Rules should state more directly what they intend to achieve.

Consultation Question 37.

10.26 We provisionally propose that, where possible, paragraphs of the Immigration Rules:

(1) should be self-standing, avoiding cross-reference to other paragraphs unless strictly necessary; and

(2) should state directly what they intend to achieve.

Do consultees agree?

CROSS-REFERENCING AND SIGNPOSTING

10.27 Some cross-referencing in the Immigration Rules is, from the legal point of view, superfluous. For example, paragraphs 320 and 322 in Part 9 (Grounds for refusal) indicate that the general grounds in those paragraphs apply in addition to the category-specific grounds in Parts 2 to 8. However, those other Parts of the Rules sometimes contain legally superfluous cross-references to Part 9. There is inconsistency in the way that various Parts cross-refer to Part 9 (Grounds for refusal). Some, (such as Part 8 (Family members)), make it clear that the applicant must not fail the general grounds for refusal whereas Appendix FM (Family members) does not cross-refer to Part 9 but has its own provisions on "suitability".

10.28 Another example of superfluous cross-referencing relates to the requirement to register with the police at paragraph 326 of Part 10 (Registering with the police). This requirement applies to multiple categories of applicants. At present, paragraph 326 is cross-referred to within some of the category-specific provisions. In Part 6A (Points-based system), in relation to Tier 1 (Exceptional Talent) Migrants, paragraph 245BC(b)(ii) provides that entry clearance will be granted subject to “registration with the police, if this is required by paragraph 326”.[413] This mention has no effect on the scope of application of Part 10, and serves only as a reminder of its existence.

10.29 Sometimes the superfluous cross-referencing is done inconsistently. In Part 7 (Other categories) – a part to which Part 9 (Grounds for refusal) already applies – paragraph 248D(viii) expressly includes the general grounds among the criteria for indefinite leave to remain. By contrast, paragraph 248B mandates the grant of other leave to remain for the same applicant category if the criteria in paragraph 248A are met, without mentioning the general grounds. It is left unclear whether this means that the general grounds are excluded from decisions under paragraph 248B. The reader can only fall back on the unlikelihood of this being the intended result.

10.30 In some cases, the requirements of the Rules are supplemented by requirements that derive from other sources of law. These include the Immigration (Health Charge)

[413] The cross-reference to Part 10 (Registering with the police) is repeated throughout Part 6A for each tier of the points-based system.

Order 2015,[414] which requires non-EEA nationals applying for entry clearance or leave to remain in the United Kingdom for a limited period to pay a charge in order to access the NHS. The surcharge is briefly referred to in Part 1 of the Rules, stating that it "must be paid in accordance with the process set out on the visa and immigration pages of the GOV.UK website". The signposting could be made more prominent and include reference to the Immigration (Health Charge) Order 2015.[415] Paragraph 276A04 in Part 7 (Other categories) requires the Secretary of State to notify an applicant of any requirement to pay the charge where the person has made an unsuccessful application for indefinite leave but falls to be granted limited leave to remain on long residence or Article 8 grounds. A similar requirement is contained in paragraph GEN.1.5 of Appendix FM (Family members).

10.31 There are also several cross-references in the Rules to the Immigration Skills Charge Regulations 2007,[416] which impose an obligation on persons who sponsor skilled migrants from certain overseas territories to pay a charge in respect of each skilled migrant whom they sponsor. Appendix A (Attributes) provides that a certificate of sponsorship will only be considered valid if the sponsor has paid this charge.[417]

10.32 There are other aspects of immigration control covered in the Rules which also overlap directly with legislation, such as cancellation and curtailment of leave.[418]

Discussion

10.33 We provisionally consider that "signposting", whether to other parts of the Rules or to relevant legislation, is in principle desirable. When included in a route-specific portion of the Rules it can have the useful effect of reminding the reader that there are, for example, general grounds of refusal to be taken into account as well. Some of the legally superfluous cross-referencing just referred to may well have been included by way of such a reminder.[419]

10.34 The Immigration New Zealand Operational Manual, the equivalent to the United Kingdom's Immigration Rules in that jurisdiction, makes occasional cross-references to regulations and provisions of Acts that are directly relevant to the displayed provision. We provisionally consider that it would be helpful for the Rules to flag up to

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414 SI 2015 No 792

415 SI 2015 No 792.

416 SI 2017 No 499 (made under ss 70A and 74(8) of the Immigration Act 2014).

417 Paras 74A and 77C.

418 The overlapping legislation includes the Immigration Act 2014; Immigration (Leave to Enter or Remain) Order 2000, SI 2000 No 1161; Nationality, Immigration and Asylum Act 2002; Immigration and Asylum Act 1999; and Immigration (Biometric Registration) Regulations 2008, SI 2008 No 3048.

419 In our recent Report accompanying our new Sentencing Code, we found signposts to be a particularly useful drafting technique given the complexity and size of the material within the Code. We also considered that use of signposts could increase the digital accessibility of the Code as it allows users to click on hyperlinks and view relevant material. The inclusion of signposts was welcomed by consultees in consultation. See the Sentencing Code Volume I: Report (2018) Law Com No 382 for a more detailed discussion of the use of signposting in the Code.

applicants any directly relevant legislative provisions that may have an impact on their application, or otherwise.[420]

10.35 But we think it is important that those who draft the Rules bear in mind the distinction between a "signpost" that simply draws the reader's attention to other provisions that apply to the case, and a provision drafted in such a way that it purports to make the other provision applicable to the case. As the example in paragraph 10.29 above shows, inconsistencies in rules that purport to make other rules applicable can give rise to genuine doubt as to their legal effect.

Consultation Question 38.

10.36 We provisionally consider that:

(1) appropriate signposting to other portions of the Rules and relevant legislation is desirable in the Immigration Rules;

(2) where the other portion of the Rules or the legislation in question already applies to the case, the signposting should be phrased so as to draw attention to the other material and should avoid language that purports to make the other material applicable where it already is;

(3) where portions of the Rules use signposting, they should do so consistently.

Do consultees agree?

REPETITION

10.37 In chapter 7 we considered the issue that we described as "duplication", where a particular topic is covered in more than one place in the Rules. We noted that it increased the overall length of the Rules as well as generating scope for inconsistency. Here we consider a similar topic, the repetition of material within a Part of the Rules.

10.38 A common example of this relates to the requirements for leave for particular categories of applicants. Commonly, a list of the requirements is set out separately in relation to applications for entry clearance, for limited leave to remain and for indefinite leave to remain. The lists of requirements have much the same contents. We seek consultees' views on whether the requirements should be listed in full three times, or whether a different technique should be adopted in order to reduce such repetition.

10.39 This issue is illustrated in Part 9 (General grounds for refusal) of the Rules, a copy of which is provided in appendix 1 to this consultation paper. It sets out a number of identical provisions in paragraph 320 (general grounds of refusal of entry clearance) and paragraph 322 (general grounds of refusal of leave to remain).

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[420] For example, para A6.10 "Fees payable to INZ when making applications and requests" refers users to the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010.

10.40 Our redraft of the general grounds is in appendix 3. It attempts to avoid this repetition by organising the grounds into those applying to entry clearance and all forms of leave (section 4.2), additional grounds applicable to entry clearance and leave to enter (section 4.4), and additional grounds applicable to leave to remain and variation of leave to enter or remain (section 4.5). Refusal on grounds of criminal offending is dealt with separately because of the differences of detail as between indefinite leave to remain and all other forms of leave.

10.41 A possible advantage of this approach is that it shortens the text. A possible disadvantage is that the reader has to go to more than one paragraph in order to pull together the refusal grounds applying to an application for a particular form of leave.

10.42 Where the Rules are accessed online, length is less of a problem. We consider further the way in which technology can be used to improve the accessibility of the Rules to the applicant in chapter 14.

10.43 We seek consultees' views on the merits and demerits of the rival approaches. We would be grateful to have our attention drawn to other advantages or disadvantages of the approaches apart from those referred to in this paper.

Consultation Question 39.

10.44 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.

ESTABLISHING AND MAINTAINING CLEAR DRAFTING

10.45 Our intention is that, following consultation, we will publish our final report which will include our final recommendations for how the Rules should be drafted in the future. It will be crucial to ensure that any new approach adopted in consequence of our recommendations will be applied, and continue to be applied, by those charged with drafting the new Rules. There is also a danger that over the ensuing years – possibly in response to a need to draft changes to the Rules at a fast pace – our recommendations may be increasingly overlooked by future drafters. If this occurs, then the same flaws that are apparent in the current Rules may be reintroduced.

10.46 We have therefore considered how to ensure that best drafting practice is established and maintained. One way of doing this could be to establish a drafting guidance document based on our final recommendations. Such a guide could be published and maintained by the Home Office, and any changes to it be the subject of consultation.

10.47 Home Office drafters would be expected to have regard to the document when drafting the Rules. However, we do not consider that it would be possible or appropriate to lay down binding rules from which drafters could not deviate. Rather, the guide would act as the benchmark by which to evaluate drafting.

10.48 In 2009 the Home Office consulted on the following framework for drafting the Rules (which was intended to accompany the introduction of a new Immigration Act, but was not taken forward):

(1) get straight to the point, using a direct, active style;

(2) remove any words or phrases that are not essential;

(3) keep sentences short. Aim for less than 20 words;

(4) keep pages and sections short. Use bullet points;

(5) use active verbs instead of abstract nouns;

(6) avoid double negatives and passive sentences;

(7) draft Rules so they are gender-neutral;

(8) say "must" where something is required and "will" where something is inevitable;

(9) say "can" or "could" where there is choice or when something is not inevitable;

(10) where "can" or "could" are used, explain the circumstances in which this might or might not be true;

(11) use simple, everyday English. Opt for short, common words. Avoid old-fashioned, formal words (for example, "acquire" or "by virtue of");

(12) avoid using everyday words with an alternative meaning (for example, "furnish" meaning provide);

(13) consider the visual impact of the Rules;

(14) highlight key words;

(15) link the Rules to other relevant information; and

(16) avoid acronyms. Use terminology only where it is necessary or has no short alternative. Define all terminology in the glossary.[421]

10.49 The Home Office Consultation Paper also proposed that in drafting the Rules, the following would be considered:

(1) the Plain English Campaign guide to legal phrases;[422]

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421 Home Office UK Border Agency, *Simplifying Immigration Law: A New Framework for Immigration Rules* (2009), p 15.

422 See Plain English Campaign, The A to Z guide to legal phrases, at www.plainenglish.co.uk/files/legalguide.pdf (last visited 7 January 2019).

(2) the Plain English Campaign A-Z of alternative words;[423]

(3) the UK Border Agency A-Z of Simpler Words and Phrases; and

(4) Home Office and UK Border Agency House style guide for communications.[424]

10.50 In our provisional view, this framework provides a useful starting point. It contains drafting guidelines which are straightforward and easy to understand and implement. The framework also avoids getting bogged down in too much detail and being inflexible, but does include some specific expectations. We welcome views on whether this framework is adequate and, in particular, whether there is additional detail that could usefully be included or whether specific points should be excluded.

10.51 We also seek views on the following additions to this framework (the first three of which reflect specific points made to us by stakeholders):

(1) avoid where possible paragraphs which contain 10 sub-paragraphs or more;

(2) the starting point should be that each sentence in a paragraph should be a separate numbered paragraph;

(3) ensure it is clear whether paragraphs are intended to operate cumulatively or instead as alternatives. This could be achieved by putting the appropriate conjunctive at the end of the penultimate paragraph or at the end of each paragraph, depending on the provision in question. However, conjunctions should not be mixed; and

(4) avoid terms which are unclear to those not familiar with them, such as referring to immigration decision-making "at port", meaning an immigration control point not necessarily on the coast.

10.52 In relation to the third of those points, we provisionally consider that it will usually be sufficient to put the appropriate conjunction at the end of the penultimate paragraph. This relies on the implication (in the absence of a contrary indication) that each of the preceding paragraphs is separated by the same conjunction. However, this makes the reader wait until then to know whether the paragraphs are cumulative or alternative and may be unhelpful with a long list of paragraphs. It is of course possible to say "and" or "or" at the end of each paragraph. That can however be cumbersome. It might also be possible to add words preceding the list in a way that makes it clear that the items are cumulative or alternative (for example "if any of the following apply ..." or "if all of the following apply ...". We welcome views on these and any other additional points that might be added to the framework.

10.53 We also seek views on whether a more imaginative use of formatting could help to improve the clarity of the Rules. Examples might include:

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[423] See Plain English Campaign, The A to Z of alternative words, (2001) at www.plainenglish.co.uk/files/alternative.pdf (last visited 7 January 2019).

[424] Home Office UK Border Agency, *Simplifying Immigration Law: A New Framework for Immigration Rules* (2009), p 15.

(1) splitting up the text to make it easier to read and navigate, particularly in the online context (for example by more use of subheadings and new paragraphs);

(2) increased font size for subheadings;

(3) using the clearest font available (whilst this is a matter of personal preference, sans serif fonts, like Arial, Helvetica or Verdana, are frequently considered best for online documents);

(4) the use of double spacing in the text itself; and

(5) greater space between paragraphs.

10.54 Our provisional proposals on matters relating to drafting style are set out in the drafting Guide which follows. We seek consultees' views on it.

PROPOSED GUIDANCE FOR DRAFTING OF THE IMMIGRATION RULES

1. This is a drafting framework for the Immigration Rules. It is intended to assist drafters to ensure that the Rules are drafted in a way that is as clear and consistent as possible.

2. Drafters should have regard to this framework when drafting the Rules. However, it is not binding. The framework is intended to be a benchmark from which to evaluate drafting. Everything in the framework is subject to the fundamental requirement that the Rules must be accurate and effective, and drafters need to take these requirements into account.

General drafting style

3. When drafting the Rules, officials should have in mind the need, where possible, to:

   a. get straight to the point, using a direct, active style;

   b. remove any words or phrases that are not essential;

   c. keep sentences short, aiming for a maximum of 20 words;

   d. keep pages and sections short;

   e. use bullet points;

   f. avoid where possible paragraphs which contain 10 sub-paragraphs or more;

   g. use active verbs instead of abstract nouns;

   h. avoid double negatives and passive sentences;

   i. draft Rules so that they are gender-neutral;

   j. say “must” where something is required and “will” where something is inevitable;

   k. say “can” or “could” where there is choice or when something is not inevitable;

   l. where “can” or “could” are used, explain the circumstances in which this might or might not be true;

   m. use simple, everyday English. Opt for short, common words. Avoid old fashioned, formal words (for example, “acquire” or “by virtue of”);

   n. avoid using everyday words with an alternative meaning (for example, “furnish” meaning provide);

   o. avoid using “jargon” terms that may confuse readers who are unfamiliar with them; for example, say “at an immigration control point” rather than “at port”;

p. avoid acronyms;

q. use terminology only where it is necessary or has no short alternative. Define all terminology in the glossary;

r. consider the visual impact of the Rules;

s. highlight key words; and

t. link the Rules to other relevant information.

4. In addition, when drafting the Rules the following should be considered:

a. the Plain English Campaign guide to legal phrases;

b. the Plain English Campaign A-Z of alternative words;

c. the UK Border Agency A-Z of Simpler Words and Phrases;

d. the Home Office and UK Border Agency House style guide for communications; and

e. The Government Digital Service style guide.

5. It is important to be clear whether paragraphs are intended to operate cumulatively or instead as alternatives. It should normally be sufficient to put the appropriate conjunction at the end of the penultimate paragraph and rely on the implication (in the absence of a contrary indication) that each of the preceding paragraphs is separated by the same conjunction.

6. However, in exceptional cases, where lists are extremely long, it may be permissible to:

a. say “and” or “or” at the end of each paragraph; and/or

b. use words preceding the list in a way that makes it clear that the items are cumulative or alternative (for example “if any of the following apply ...” or “if all of the following apply ...”.

7. However, conjunctions should not be mixed. In other words, drafters should not put different conjunctions at the ends of different paragraphs in the same provision.

Formatting

8. The imaginative use of formatting can help to improve the clarity of the Rules. Drafters should consider:

a. splitting up the text to make it easier to read and navigate, particularly in the online context (for example by more use of subheadings and new paragraphs);

b. increased font size for subheadings;

c. use *** font with a font size of ** pt;

d. the use of double spacing in the text itself; and

e. greater space between paragraphs.

Numbering

9. Paragraphs should be numbered using a three-level numbering system (such as 8.1.1, 8.1.2 and so on). The first level number should correspond to the number of the Part in which the paragraph appears. Use the second level number to identify a section in the Part relating to a particular topic and the third level number to number each paragraph within the section.

10. In addition, the following should apply when numbering the Rules:

a. the starting point should be that each sentence in a paragraph should be a sub-paragraph;

b. lettered sub-paragraphs should be used in all cases first ((a), (b), (c) and so on);

c. avoid sub-subparagraphs, but where they are unavoidable use lower case Roman numerals.

11. The following should apply to future amendments and insertions into the Rules:

a. when inserting a new whole paragraph at the beginning of a Part or Appendix, the number should be preceded by a letter, starting with “A” (A1, B1, C1 and so on). A rule inserted before “A1” (or “ai”) is “ZA1” or (“zai”);

b. in the case of lettered paragraphs, new paragraphs inserted before paragraph (a) should be (za), (zb) and so on, and paragraphs inserted before (za) should be (zza), (zzb) and so on;

c. where adding a provision at the end of an existing series of provisions of the same kind (for example, a new paragraph at the end of a Part or a sub-paragraph at the end of a paragraph), the numbering should continue in sequence;

d. the following should apply when inserting whole provisions between existing paragraphs:

e. new paragraphs inserted between 1 and 2 should be 1A, 1B, 1C and so on;

f. new paragraphs inserted between 1A and 1B should be 1AA, 1AB, 1AC and so on;

g. new paragraphs inserted between 1 and 1A should be 1ZA, 1ZB, 1ZC and so on (and not 1AA and so on); and

h. new provisions inserted between 1A and 1AA should be 1AZA, 1AZB, 1AZC and so on;

i. a lower level identifier should not be used unless necessary (for example, a new provision between 1AA and 1B should be 1AB not 1AAA, however a new provision between 1AA and 1AB should be 1AAA);

j. the above should apply equally to sub-paragraphs with Roman numerals and lettered paragraphs, for example:

I. new sub-paragraphs between sub-paragraphs (i) and (ii) should be (ia), (ib), (ic) and so on;

II. new paragraphs between paragraphs (a) and (b) should be (aa), (ab), (ac) and so on; and

III. new paragraphs between paragraphs (a) and (aa) should be (aza), (azb), (azc) and so on; and

k. after Z, the following sequence should be used: Z1, Z2, Z3 and so on (for example, after paragraph 360Z the sequence should be 360Z1, 360Z2 and so on, and after paragraph (z) the sequence should be (z1), (z2), (z3) and so on);

l. when inserting a series of paragraphs, consider identifying them by a new second level number, e.g. 8.1A.1, 81A.2 and so on;

m. when inserting new paragraphs into text which has been heavily amended and contains a potentially confusing quantity of inserted numbering, consider re-numbering the portion of text in question, even if this entails changing the numbers of existing paragraphs.

Titles and subheadings

12. The following principles should be applied in the future to the use of titles and subheadings:

a. the titles given in the Index and the Rules should be consistent;

b. the Parts and Appendices should always be numbered;

c. titles and subheadings should give as full an explanation of the contents as possible, consistent with keeping them reasonably short;

d. title and subheading should not go into a second line unless necessary;

e. subheadings should not need to repeat the descriptive work done by the Part title; and

f. titles and subheadings should avoid initials and acronyms;

g. use *** font with a font size of ** pt.

Overviews and contents pages

13. Overviews can be helpful when used appropriately. An overview can be more descriptive than the Rules themselves and can draw out themes and relationships between provisions. An overview can explain how the Part fits into the legislative landscape, for instance by including signposts to other relevant provisions. However, there are dangers to watch out for. For example:

    a. an overview that merely repeats the headings is unlikely to be helpful;

    b. an overview might be given some unintended effect by the courts – although this danger would be minimised by ensuring that the overview is accurate and drafted in a way that makes it clear that it is intended merely as a signpost; and

    c. when amending the Rules, the possible need to amend the overview may be overlooked.

14. Consider providing a table of contents at the beginning of some, or all, of the individual Parts.

Cross-referencing

15. The default position of drafters should not be to include multiple cross-references but to consider how the information might be presented in a straightforward and self-contained way. For example, it would be possible to provide that a common provision applies across the board, subject to any qualification of it contained in a category-specific rule.

16. Any internal and external cross-reference should always include a hyperlink. In the case of internal cross-references to other Rules, the hyperlink should take the reader directly to the relevant Rule. In the case of external references, the hyperlink should take the reader directly to the relevant webpage on HM Government's "legislation.gov.uk" website. This should also open as a new tab on a browser because otherwise the reader will lose where they are in the Rules.

17. In cases where the Rules are being amended to include a reference to separate legislation which is not yet publicly available, the Home Office will endeavour to provide a hyperlink to an alternative site or supply the text of the relevant legislation on its website and provide the appropriate hyperlink.

18. It is important to remember that not everyone will have access to the online version of the Rules. It is therefore important that the drafters should clearly signpost and explain the cross-references.

Definitions

19. If making amendments to Part 1 of the Rules (as identified in our proposed division of subject-matter set out at paragraph 8.10 above) – which contains the common definitions – it is important to remember that the terms should be arranged alphabetically.

20. All definitions should be grouped in the introduction, thus making them easier to locate, and should not be spread out in the different Parts and Appendices. This approach should apply even if certain definitions apply only for the purposes of one Part.

21. All defined terms should be italicised in order to make the reader aware that the term is defined elsewhere. In addition, all defined terms should include hyperlinks to the definition.

Consultation Question 40.

10.55 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?

Chapter 11: Our specimen redrafting work

11.1 Part 9 (Grounds for refusal) of the current Immigration Rules is reproduced in appendix 1 to this consultation paper and Appendix FM (Family members) in appendix 2. To illustrate the possibility of simplification, we have attempted to redraft Part 9 and the portion of Appendix FM dealing with partners in accordance with the approach of reducing or eliminating duplication between them and repetition within them.[425] The redrafted Part 9 is in appendix 3 and the redrafted part of Appendix FM is in appendix 4.

11.2 Our redraft presents the General grounds for refusal (item 4 in the list of topics for inclusion in the new Rules as envisaged in paragraph 8.1 above) as a set of common provisions of general application, which might be subject to qualifications for particular categories of applicant. We have assumed that, in a single set of Rules, these qualifications would be contained in category-specific Parts. Our redraft of Appendix FM is envisaged as operating in conjunction with the General grounds. It removes suitability provisions that duplicate the general grounds, replacing them with a single provision that supplements the general grounds.

11.3 If the booklet method of presentation of the Rules (discussed in chapter 8) were adopted, we envisage that the General grounds for refusal would be included in each booklet in a form that incorporated any modifications of the standard grounds that applied to the immigration route dealt within the booklet.

11.4 The substance of the Rules is outside the remit of this project. We have nevertheless standardised some provisions in our redraft where we consider it likely that our proposal for an audit of overlapping provisions (see paragraph 8.31 above) would lead to the conclusion that a difference between provisions had no policy justification. This is for illustrative purposes only, to illustrate the extent of simplification that we consider might be possible.

THE GENERAL GROUNDS FOR REFUSAL

11.5 Part 9 (Grounds for refusal) currently consists of paragraphs A320 to 324.[426] Its first three paragraphs (paragraphs A320, B320, C320 and D320) disapply the Part in part to Appendix FM (Family members), in part to Appendix Armed Forces, to Appendix V (Visitors), and to Appendix EU (with one exception: para 323(ii), curtailment of leave to enter or remain where a person has ceased to meet the requirements of the Rules under which his leave was granted). Paragraphs 323A to 324 apply to particular categories of migrant. Those paragraphs are omitted from the redraft in line with the approach just described.

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[425] We chose Appendix FM (Family members) because stakeholders informed us that this was one of the most challenging Parts of the Rules in terms of its drafting and style.

[426] Para 321, dealing with refusal of leave to enter in the case of a holder of an entry clearance, was deleted in December 2017.

11.6 Paragraph 320 deals with refusal of entry clearance or leave to enter. Paragraph 321A concerns the cancellation of leave while its holder is “at port” or outside the United Kingdom. Paragraph 322 deals with refusal of leave to remain or of a variation of leave to enter or remain. Paragraph 323 deals with the curtailment of leave to enter or remain.

11.7 There is considerable duplication between the contents of paragraphs 320 and 322. We have accordingly sought to merge the duplicated grounds into one paragraph applicable to all forms of leave or variation of leave. We have dealt separately with refusal of leave on grounds of criminal offending. These grounds are almost uniform, the exception being the grounds of refusal for indefinite leave to remain, where the “rehabilitation periods” for offences punished by imprisonment are longer and the ground for refusal based on recent but less serious offending is a mandatory ground. Also, presumably by oversight, there is currently no ground of refusal based on offending in the case of limited leave to remain. We have corrected this apparent omission.

11.8 We have then dealt with the grounds specific to refusal of entry clearance or leave to enter, followed by grounds of refusal specific to applications for leave to remain and for variation of leave to enter or remain. Finally, we have dealt with cancellation and curtailment of leave.

11.9 The opening (unnumbered) subparagraph of paragraph 322 modifies its application in cases under paragraph 159I (domestic workers who are victims of slavery or human trafficking). Those modifications have also been omitted.

11.10 We have applied a number of the techniques proposed in our provisional drafting framework. These include:

(1) a three-level numbering system;

(2) plain English;

(3) short sentences;

(4) marking defined terms by the symbol #; and

(5) the standardised use of conjunctions at the end of paragraphs.

11.11 We have attempted generally to modernise and simplify the wording used. The more extensive modifications are pointed up in footnotes.

11.12 Part 9 (Grounds for refusal) currently totals approximately 5,700 words. Excluding the category-specific exclusions and modifications reduces this to approximately 3,700. Our redraft has further reduced that wordcount by almost a third, to 2,500 words.

FAMILY MEMBERS

11.13 Appendix FM (Family members) contains a number of immigration routes based on family relationships. We have remarked upon its complicated interaction with Part 8 (also entitled “Family members”) and Appendix FM-SE (Family members – specified evidence). Appendix FM provides immigration routes for a number of categories of

present or former family members of persons who have settled status, are British citizens or, in some cases, have refugee leave or humanitarian protection. The categories are: partners, bereaved partners, victims of domestic violence, children, parents and adult dependent relatives.

11.14 The Appendix begins with paragraphs prefixed "GEN", which are a mixture of definitions and provisions modifying the effect of other provisions in the Appendix. These are separated from the provisions relating to particular types of family member because they apply to all[427] or more than one[428] of the family member categories. Some of the provisions cater for rights under Article 8 of the ECHR and section 55 of the Borders, Citizenship and Immigration Act 2009. They are followed by sets of provisions for particular types of family member.

11.15 Each of the sets of provisions largely aims to be a complete code, with word for word repetition of provisions such as financial requirements. This approach is, however, not uniformly followed. Various sections on "suitability" (largely duplicating the general grounds for refusal in Part 9) are placed under the heading "partners", but apply to all categories of family member. In addition, there is a section "EX" (also designed to cater for Article 8 rights) which is placed between the rules for partners and the rules for bereaved partners but applies to partners and to parents.

11.16 The rules on partners are the largest section of the Appendix, occupying 15 of its 37 pages. We have attempted a redraft of these, to form part of item 12 in the list of topics at paragraph 8.10 above. It does not aim to be a complete restatement of the rules governing partners. In particular, it does not include the modifications of financial and other requirements introduced by Section GEN and Section EX.[429]

11.17 The rules on partners portion of Appendix FM (Family members), like other portions, currently progresses through entry clearance and limited and indefinite leave to remain for partners.[430] This is designed to assist the reader by putting all the requirements for a particular type of leave in one place, but entails a considerable amount of repetition.

11.18 The requirements are principally relationship requirements, immigration status requirements, financial requirements (which currently include accommodation requirements) and English language requirements.[431] Our redraft follows the alternative approach of dealing with them requirement by requirement. We envisage

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427 Such as para GEN.1.14, applying the Part 15 ATAS certificate condition of leave to applicants granted leave under Appendix FM where they are 18 years old, or will reach that age during the period of leave granted.

428 Such as para GEN.1.6, which applies to partners and parents.

429 These are particularly complicated. Some provisions within the partner rules prescribe a "standard" set of financial requirements, as well as different financial requirements for those in receipt of various disablement benefits. Para GEN.3.1 introduces a further set of financial requirements for Article 8 cases. It does this by cross-referring to para 21A of Appendix FM-SE. Section EX, in conjunction with various other paragraphs, modifies some of the other requirements in Article 8 cases.

430 Leave to enter is provided for by para GEN.2.1, which makes it conditional on holding a valid entry clearance.

431 In addition, length of residence requirements and the 'Knowledge of language and life' requirements apply to indefinite leave to remain.

that the redrafted text would be accompanied by text (which we have not attempted to draft) setting out which requirements need to be met by particular applicants. The purpose of the work that we have done is to enable consultees to compare our text with the equivalent section of the current Appendix FM (in appendix 2 to this consultation paper), and give their views on the success or otherwise of its drafting style.

11.19 In addition to removing repetition, we have removed a large amount of wording that seems to us to be unnecessary, for example by merging current paragraphs E-ECP.2.2 and 2.3 and E-LTRP.1.3 and 1.4 into our paragraph 13.1.3. We have also omitted those parts of paragraphs D-LTRP.1.1 and 1.2 that set out the future entitlement of a person granted limited leave to remain as a partner. These simply duplicate the requirements currently set out in paragraph E-ILRP.1.3.

11.20 We have attempted to rationalise the organisation of the text. For example, the modification of the financial requirements that is currently contained in paragraph E-ILRP.1.3(1A) is moved in our redraft to paragraph 13.4.2 which sets out the requirement in question.

11.21 We have attempted to clarify the wording, for example in the case of the financial requirements. The relationship between meeting the requirement by income and meeting it by savings is intricate and not easy to express clearly. We have attempted to improve upon the expression of it in, for example, current paragraph E-ECP.3.1. We welcome consultees' views on whether we have succeeded. We considered including a worked example to illustrate the interaction, but provisionally concluded that this was something better left to guidance.

11.22 We have endeavoured to express provisions more crisply, for example in recasting paragraph E-ILRP.1.5 as our paragraph 13.9.7. We have generally attempted to follow the drafting framework provisionally proposed in chapter 10.

11.23 In accordance with the three-level numbering system suggested in chapter 9, references in the draft to a "section" are to a group of paragraphs preceded by a heading with a two-level number. References to a "paragraph" are to a paragraph with a three-level number. In order not to over-complicate the numbering system, we envisage that other headings (such as the heading "Partners" in the draft) would be unnumbered.

11.24 The partners portion of Appendix FM (Family members) currently contains nearly 7,000 words. Our redraft reduces the word count to under 2,500.

11.25 We invite consultees' general comments on the success or otherwise of the techniques used in each of the redrafts. These are intended only to be illustrative of what might be done, and we do not seek detailed comments on the wording used, but would be grateful to be alerted to any inaccuracy in reproducing the effect of the provisions of the current Rules.

Consultation Question 41.

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

Consultation Question 42.

11.27 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?

Chapter 12: Keeping the Immigration Rules under review

12.1 The preceding chapters of this consultation paper have considered what steps might be taken to simplify the current Immigration Rules. This chapter will consider ways in which the Rules might be kept simple on an ongoing basis. We consider what mechanisms might be effective to combat complexity in the long term. This is important if simplification, once achieved, is to be maintained.

PARLIAMENTARY OVERSIGHT

12.2 We start by setting out the machinery set up by the Immigration Act 1971 for formal approval by Parliament of the Rules. Altering the 1971 Act is outside the scope of this project. What follows is provided by way of background.

The 1971 Act's unique oversight mechanism

12.3 The 1971 Act is unusual in its mechanism for parliamentary oversight of proposed changes to the Rules. Section 3(2) of the 1971 Act provides:

> If a statement laid before either House of Parliament under this subsection is disapproved by a resolution of that House passed within the period of forty days beginning with the date of laying (and exclusive of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days), then the Secretary of State shall as soon as may be make such changes or further changes in the rules as appear to him to be required in the circumstances, so that the statement of those changes be laid before Parliament at latest by the end of the period of forty days beginning with the date of the resolution (but exclusive as aforesaid).

12.4 In contrast, the closest standard oversight mechanism is the negative resolution procedure, which is set out in section 5(1) of the Statutory Instruments Act 1946 in the following terms:

> The instrument shall be laid before Parliament after being made … and if either House within the period of forty days beginning with the day on which a copy thereof is laid before it, resolves that an Address be presented to His Majesty praying that the instrument be annulled, no further proceedings shall be taken thereunder after the date of the resolution.

12.5 There are similarities between the procedures in the two Acts, but there are also differences. One difference relates to what precisely is laid before Parliament. Whilst the 1946 Act requires that a statutory instrument itself is laid before Parliament, the 1971 Act provides that a "statement" of the Rules must be laid. Another difference is that a successful resolution against a statutory instrument invalidates that instrument,

whereas resolving against a statement of changes to the Rules does not prevent the changes having effect.[432]

12.6 When the Immigration Bill that became the 1971 Act was being considered in the House of Lords, the undesirability of annulling the Rules (so that they would be inoperable) was expressed in the following terms:

> There are millions of visitors coming to our ports every year. I do not have the figures as to immigration officers, but this is a very substantial service. These people are entitled to know under what rules they are expected to act. These rules are published and laid before Parliament. It would be quite impossible to expect any service of this kind not to operate on the basis of the published rules. If Parliament disapproves of them, this clause [section 3(2)] says that the Home Secretary must go away and think again and come forward with more rules, and if they are approved they will be substituted. It would be totally unrealistic for noble Lords to expect that if a rule were disapproved to-day it would be deleted and the immigration service would have no rules until such time as a new rule had been substituted.[433]

12.7 In contrast, in a subsequent debate on the Bill, Lord Gardiner criticised the procedure in the following terms:

> There is a completely new invention under which there is to be put before Parliament, not the rules but a statement by the Secretary of State about the rules. The Bill says: The Secretary of State shall from time to time lay before Parliament statements of the rules, or any changes of the rules … Then it is provided that it shall be open to Parliament to disapprove, not the rules of course, because they are never laid before Parliament, but the statement. And if the statement is disapproved, the rules still remain; they still have the force of law, and Parliament is not entitled to annul them in any way. All that happens is that if the statement is disapproved, the Secretary of State shall as soon as may be make such changes or further changes in the rules as appear to him to be required in the circumstances and lay a further statement before Parliament accordingly. That is all that happens. This is quite unique and without precedent, and it is difficult to resist the conclusion that it is done in this form in order that it may appear to give Parliamentary control, when on careful examination it clearly does not.[434]

12.8 For statutory instruments, the alternative to the negative resolution procedure is the affirmative procedure. This procedure requires that the statutory instrument must be approved by Parliament before it can be made and brought into force. In Parliamentary debates on the Bill, the opposition pushed for an affirmative resolution procedure.[435] This, however, was rejected because the Government concluded that

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[432] In addition, statutory instruments are scrutinised by the Joint Committee on Statutory Instruments.

[433] *Hansard* (HL), 19 July 1971, vol 322, col 704 (Lord Windlesham, Minister of State, Home Office). See: https://api.parliament.uk/historic-hansard/lords/1971/jul/19/immigration-bill (last visited 11 January 2019).

[434] *Hansard* (HL), 12 October 1971, vol 324, col 324.

[435] *Hansard* (HL), 16 June 1971, vol 819, col 494.

immigration policy needed to be flexible, and that the affirmative procedure would require an excessive amount of Parliamentary time.[436]

How statements of changes in the Rules are scrutinised

12.9 While immigration policy is frequently debated in Parliament, and debates raise issues in relation to the content of the Rules,[437] it appears that resolutions against statements of change are a rare occurrence.[438]

12.10 In current practice, the merits of all statements of changes to the Rules are examined by the Secondary Legislation Scrutiny Committee in the House of Lords. The process was described in the following terms by Lord Hope in *Alvi*:

> Written and oral evidence may be called for from, among others, the Secretary of State herself. The result of these inquiries is made the subject of a detailed report, in which the changes to the rules may be drawn to the special attention of the House. The Committee aims to do this within 12 to 15 days of laying, so that there is time for members of the House to give the instruments further scrutiny within the 40 day period.[439]

Discussion

12.11 In chapter 3 we discussed the Supreme Court's decision in *Alvi* as to what must be included in the Rules in order to be enforceable.[440] We noted Lord Hope's conclusion that the wiser course in case of doubt was to include material in the Rules as laid in Parliament. In chapter 5 we considered the impact that this had on the volume and complexity of the rules.

12.12 In chapter 6, we engaged with Lord Walker's suggestion in *Alvi* that an alternative balance between the rules and guidance might be achieved by expressing rules in general terms, providing non-mandatory examples of how to meet those rules in guidance. However, guidance is not subject to formal oversight.

12.13 On its face, having more material in the Rules would appear to enhance Parliament's ability to scrutinise statements of changes to the Rules. However, the length and

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436 *Hansard* (HL), 16 June 1971, vol 819, col 494. See also *Hansard* (HL), 12 October 1971, vol 324, col 316 (R Maudling MP).

437 For example, in 2011, Lord Hunt of Kings Heath moved a motion regretting that the government had not published a comprehensive explanation of the findings from the consultation on Tiers 1 and 2 about significant changes in the Statements of Changes in Immigration Rules (HC 863) to implement the Government's strategy for reducing non-EEA economic migration. This was debated in the Chamber and replied to by the Minister of State in the Home Office, Baroness Neville-Jones, on 3 May 2011: *Hansard* (HL), 3 May 2011, vol 727, col 409, reply at col 418. The motion was withdrawn.

438 See, for example, *Hansard* (HL), 15 December 1982, vol 34, col 439: http://hansard.millbanksystems.com/commons/1982/dec/15/immigration (last visited 11 January 2019), when a resolution disapproving a statement of changes was successfully moved in the House of Commons. The view was taken that the statement would continue to have effect until the Secretary of State introduced a further statement of changes reflecting what the Secretary of State understood to be the prevailing view of the House. On 13 May 2008, Chris Huhne MP moved a resolution disapproving one of the first statements of changes introducing the points-based system. The motion was defeated.

439 *R (Alvi) v Secretary of State for the Home Department* [2012] UKSC 33, [2012] 1 WLR 2208 at [35].

440 *R (Alvi) v Secretary of State for the Home Department* [2012] UKSC 33, [2012] 1 WLR 2208.

complexity of the statements may in fact hinder Parliamentary scrutiny. This was recognised by Lord Hope in *Alvi* when he commented:

> I am conscious of the burden which this finding will impose on the Scrutiny Committee … The volume of the material it will have to look at, within what is necessarily a very short timetable, may be such as to defeat the object of section 3(2) of the Immigration Act 1971 which must be taken to have been to ensure that the Rules, and any changes to them, were subject to effective scrutiny. The Committee cannot be expected to look at every detail. The greater the detail, the greater the risk that matters of real importance will be overlooked and not drawn to the House's attention. The situation that has created this problem is so far removed from what it was in 1971 that one wonders whether the system that was designed over forty years ago is still fit for its purpose today.[441]

12.14 The mechanism of Parliamentary scrutiny that we have described is not in our view one which is apt to provide a means of controlling complexity in the Rules and maintaining clarity of drafting. It is better suited to considering the underlying policy changes being introduced into the Rules than the accessibility of the proposed provisions for the user.

CONSULTATION

12.15 There is no general legal duty to consult on delegated legislation. Sometimes primary legislation will require consultation before delegated legislation under it is introduced or amended. The 1971 Act includes no duty to consult on changes to the Rules or of statements of the Rules. In the absence of an express duty the Government can still decide to consult. However, it is not required to do so. Further, when changes are made to the Rules in response to court rulings, or for immediate operational reasons, it may be impractical to consult.

12.16 An independent, non-statutory Migration Advisory Committee is periodically commissioned to advise the Home Office on specific matters of migration policy, often in relation to economic migration. It has reported, for example, on points-based system matters and on EEA migration.[442] The Migration Advisory Committee often undertakes consultation as part of its research.

12.17 We have been told that the Home Office has on occasion discussed proposed changes to the Rules informally with expert stakeholders. For example, informal consultation took place with legal practitioners prior to the introduction of Appendix V (Visitors). It has also been suggested that when there has been prior consultation, the resulting Rules have worked better in practice. We have been told, for example, that the rules in Appendix V (Visitors) work better than other Parts of the Rules and that the informal prior consultation which was undertaken was a factor in this. It should be borne in mind that this may have been a more straightforward task in the context of a discrete body of rules relating to entry clearance only.

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441 *R (Alvi) v Secretary of State for the Home Department* [2012] UKSC 33, [2012] 1 WLR 2208 at [65].

442 See, for example, Migration Advisory Committee: International Students, 11 September 2018, and Migration Advisory Committee: EEA Migration, 18 September 2018

12.18 We also understand that the Home Office has amended the Rules in response to feedback from legal practitioners about how drafting could be improved or to ensure the Rules work better in practice.[443] We would welcome any further examples from consultees of consultation or feedback which have helped to improve the Rules.

BETTER REGULATION REVIEW

12.19 As part of the Government-wide drive to promote better regulation, statements of changes to the Immigration Rules which place a burden on business or on the voluntary sector now include an undertaking by the Secretary of State to review the operation and effect of the Immigration Rules and lay a report before Parliament within five years of 6 April 2017 and within every five years after that. Following each review, the Secretary of State will decide whether the Rules should remain as they are, be revoked or be amended.[444]

INFORMAL REVIEW MECHANISMS

12.20 Maintaining drafting clarity over successive amendments to the Rules is challenging and time-consuming. It can be an onerous task for those involved in the preparation of individual Rule changes. There is a risk that the benefits of a simplification process, including the associated efficiency and cost savings, could be lost over time.

An informal committee reviewing the simplicity of the Rules?

12.21 There may be merit in putting the current informal and ad hoc consultation with stakeholders on the Rules on a more regular footing by establishing an ongoing forum for discussion of the Rules.[445] Membership of an informal review committee might include civil servants, legal practitioners, members of the judiciary and other stakeholders.

12.22 We have in mind an informal review mechanism which considers principles of simplicity and accessibility for the benefit of the user. Its role would be solely advisory. We are not suggesting that there should be an extra layer of scrutiny of the substance of the Rules beyond that envisaged under the 1971 Act. Nor do we have in mind that such a committee would consider or review immigration policy. We envisage that it would be concerned with the simplicity, accessibility and coherence of the Rules and their interaction with extrinsic guidance. In the event that the Secretary of State decides to make areas of the Rules less prescriptive, and supports these Rules with

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443 For example, the *Immigration Law Practitioners' Association* reported that the statement of changes to the Immigration Rules HC 908 had to be introduced in part due to drafting errors in previous Rule changes which they raised with the Home Office.

444 See statement of changes to the Immigration Rules, HC 1534, 11 October 2018. We stress that this is included as part of the government's Better Regulation initiative, which exists to monitor regulatory burdens, and is not directed to simplification of the Rules. The undertaking is included in Rule changes with an impact on business or the voluntary sector.

445 An example of how an advisory committee might work in practice can be seen in the Social Security Advisory Committee which is an independent statutory body established in 1980. It has a very different formal role, but its composition is of interest. Members have experience in social security law, academia, policy, business, employment and the voluntary sector: https://www.gov.uk/government/organisations/social-security-advisory-committee/about/membership (last visited 7 January 2019). Former and current members have included DWP officials, barristers, charity trustees, directors and academics.

non-exhaustive guidance as to how eligibility may be established, the balance between the Rules and the guidance could be a matter for the committee's consideration.

12.23 An alternative option might be for an ad hoc forum to advise on the practical implementation of the recommendations for simplification of the Rules that we shall make as a result of the present consultation. The forum could also consider how drafting clarity should be embedded in future practice.

Consultation Question 43.

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

Consultation Question 44.

12.25 We seek views on whether informal consultation or review of the drafting of the Immigration Rules would help reduce complexity.

Chapter 13: Updating and archiving the Immigration Rules

13.1 Statements of changes to the Rules are the vehicle through which the Rules are updated. The statements of changes specify how new provisions will be brought into force, as well as setting out any transitional arrangements specifying the cases to which the new Rules apply. This chapter addresses how the statements of changes are presented, how the transitional provisions operate, the arrangements for archiving, and the frequency of changes to the Rules.

STATEMENTS OF CHANGES

13.2 There are usually two sets of major changes to the Rules each year, in addition to periodic amendments. Statements of changes to the Rules can vary in length between 10 and 300 pages.[446]

13.3 There are a range of issues with the way in which the statements of changes work in practice. Basic aspects such as determining *when* a particular Rule change takes effect can be complex. Often there are a number of implementation dates for one set of changes, while the way that various changes are implemented may differ. Some Rule changes will apply to applications submitted after a specified implementation date, some to all Home Office decisions taken after that date, and others to applications where a Certificate of Sponsorship has been assigned after that date. Other formulas are also employed.

13.4 The "temporal" application of the Rules – in particular whether new Rules apply to all decisions made after a Rule is changed, or only to applications for leave made after a Rule change – is discussed in the next section of this chapter. The use of transitional provisions specifying the cases to which a new Rule applies will also be discussed in the next section. Here we discuss how the substance of new Rules is presented.

13.5 The way in which the statements of changes to the Rules are published makes the effect of changes difficult to understand. Currently, changes are published as a list of amendments and additions to the Rules, with no equivalent of a Keeling schedule showing how they alter the existing Rules.[447] For example, an extract from Statement of changes to the Immigration Rules HC 895, published on 15 March 2018, reads as follows:

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446 For example, statement of changes to the Immigration Rules Cm 8423, 1 July 2012 is 296 pages in length.

447 A Keeling schedule is a schedule to a piece of amending legislation showing the effect of the amendments made by it upon the legislation being amended. For a fuller description, see *Form and Accessibility of the Law Applicable in Wales* LC 366 paras 8.73 – 8.90.

Changes to Part 11

11.1 Delete paragraph 345(A)(i) and replace with:

> "(i) another Member State has granted refugee status or subsidiary protection;".

Changes to Appendix FM

FM1. In paragraph R-ILRP.1.1.(c) after "remain;" insert "and".

FM2. In paragraph R-ILRP.1.1., delete sub-paragraph (d).

FM3. After paragraph E-ILRP.1.3. (1)(b)(iii) insert:

> "(1A) In respect of an application falling within sub-paragraph (1)(a) above, the applicant must meet all of the requirements of Section E-LTRP: Eligibility for leave to remain as a partner (except that paragraph E-LTRP.1.2. cannot be met on the basis set out in sub-paragraph (c) of that paragraph, and in applying paragraph E-LTRP.3.1.(b)(ii) delete the words "2.5 times").
>
> (1B) In respect of an application falling within sub-paragraph (1)(b) above:
>
> > (a) the applicant must meet all of the requirements of paragraphs ELTRP. 1.2.-1.12. (except that paragraph E-LTRP.1.2. cannot be met on the basis set out in sub-paragraph (c) of that paragraph) and E-LTRP.2.1 - 2.2.; and
> >
> > (b) paragraph EX.1. must apply.".

FM4. In paragraph R-ILRPT.1.1.(c) after "remain;" insert "and".

FM5. In paragraph R-ILRPT.1.1., delete sub-paragraph (d).

13.6 It is thus difficult to determine the impact of each of the changes. What appears to be a small change, for example a deletion of a sub-paragraph, can substantially affect an applicant's ability to qualify for leave under the Rules by removing an important exemption or a means of meeting an eligibility requirement.

13.7 Explanatory memoranda accompany the statements of changes and attempt to clarify and highlight key changes which are being made. However, they do not detail all changes and can be somewhat generalised in their description. Past memoranda have sometimes given limited detail about proposed rule changes, including statements such as:

(1) make changes and clarifications to the Immigration Rules relating to administrative review;[448]

(2) make minor changes and clarifications to the Immigration Rules on family and private life;[449] and

(3) make small corrections and technical changes to existing Immigration Rules.[450]

13.8 It can be a matter of debate whether changes are accurately described as "minor".[451]

Discussion

13.9 The text of the Rules currently in force at any point in time is published on the Gov.uk website, and can be downloaded and printed.[452] But there is no ready way of comparing a text with its predecessors to gauge the impact of changes.

13.10 We seek views on whether it would assist users to provide amended versions of the Rules with the amendments identifiable (in effect, Keeling schedules) along with or instead of the current form of statements of changes, so that the impact of Rule changes can be more readily assimilated.[453] There could also be more detail in memoranda, particularly in the section that sets out the purpose of the statements of changes[454] as this can often be the most efficient way of discovering the intended consequences of the statements of changes.

13.11 Stakeholders have told us that, where possible, they would prefer that whole paragraphs were replaced in statements of changes rather than individual words. This is on the grounds that amending individual words requires manual updates and is inefficient.

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448 See statement of changes to the Immigration Rules HC 297, 13 July 2015.

449 See statement of changes to the Immigration Rules HC 297, 13 July 2015.

450 See statement of changes to the Immigration Rules HC 535, 29 October 2015.

451 For example, the Immigration Law Practitioners' Association pointed to changes introduced by HC 309 which stated that minor changes were being made to the end date of the qualifying period for settlement, and to the way in which the maximum 180 days of absence from the UK were counted for the purposes of a settlement application. It argued that in fact the changes were substantial, especially because the provisions applied retrospectively. The retrospective element of these amendments was reversed in subsequent changes introduced in HC 1154.

452 See https://www.gov.uk/guidance/immigration-rules.

453 For a discussion of the advantages and disadvantages of Keeling schedules, including issues of cost and technological requirements, see the 14th report of the Select Committee on the Constitution: https://publications.parliament.uk/pa/ld200304/ldselect/ldconst/173/17306.htm at paras 88 to 98. Alternatives such as the incorporation of the amended legislation into the explanatory memorandum are also discussed.

454 In the memorandum to the statements of changes, "Purpose of the Instrument" section.

Consultation Question 45.

13.12 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?

TEMPORAL APPLICATION AND TRANSITIONAL PROVISIONS

13.13 In *Odelola v Secretary of State for the Home Department*, it was held that where a statement of changes is silent on whether new Rules apply to applications which have yet to be decided, they do apply to such applications.[455]

13.14 Transitional provisions are commonly introduced into the Rules where significant changes are made to the provisions on eligibility for leave for a category of migrant. Their purpose is to mitigate the effect of the changes on those in that category who have already been granted leave or have made applications on the basis of the Rules in force at the time of their application.

13.15 For example, transitional provisions were included in the Rules for family members after substantial changes were made on 9 July 2012.[456] Although this ensures fairness, it can lead to complicated and long sets of Rules (particularly where there have been numerous changes over time). Tier 2 (General) and Tier 2 (ICT) are examples of categories which have been frequently amended.

13.16 Dates of coming into force are rarely set out in the Rules themselves. They mainly appear in the implementation section of the relevant statement of changes. There is a Part of the Rules ostensibly devoted to transitional provisions – Part 2, which consists only of four numbered rules dealing principally with the temporal application of the Rules in Appendix V (Visitors). There are some provisions on dates of coming into force or of expiry to be found in other Parts.[457]

13.17 The statement of changes to the Immigration Rules HC 309, published on 7 December 2017, is an example of complicated implementation provisions:

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455 *Odelola v Secretary of State for the Home Department* [2008] EWCA Civ 308, [2009] 1 WLR 126; see also *Odelola v Secretary of State for the Home Department* [2009] UKHL 25, [2009] 1 WLR 1230.

456 Statement of changes to the Immigration Rules HC 194, 13 June 2012.

457 See, for example, paras A246, 255 to 257B and 276DI in Part 7 and paras A277 and A280 in Part 8.

> The changes to Appendix M set out in paragraph M1., and to Appendix N set out in paragraph N2. of this statement shall take effect on 28 December 2017.
>
> The changes to Appendix G set out in paragraph G1. of this statement shall take effect on 1 January 2018. However, in relation to those changes, if an application has been made for entry clearance or leave to enter or remain before 1 January 2018, the application will be decided in accordance with the Immigration Rules in force on 31 December 2017.
>
> The changes to Part 6A set out in paragraphs 6A.22 and 6A.23, to Appendix A set out in paragraphs A16. to A19., and to Appendix J set out in paragraphs J1. to J11. of this statement shall take effect on 11 January 2018. However, if an applicant has made an application for entry clearance or leave to remain using a Certificate of Sponsorship that was assigned to him by his Sponsor before 11 January 2018, the application will be decided in accordance with the rules in force on 10 January 2018.
>
> The changes to Part 5 set out in paragraphs 5.13 to 5.15 and 5.18 to 5.19, to Part 7 set out in paragraphs 7.3 to 7.5 and 7.7, to Part 8 set out in paragraphs 8.20 and 8.36, and to Appendix Armed Forces set out in paragraph AF2. of this statement shall take effect on the commencement of Schedule 10 to the Immigration Act 2016. The other changes set out in this statement shall take effect on 11 January 2018. However, in relation to those changes, if an application has been made for entry clearance or leave to enter or remain before 11 January 2018, the application will be decided in accordance with the Immigration Rules in force on 10 January 2018.

13.18 There is no single rule governing the entry into force or expiry of Rules and it can be difficult to discern which version of the Rules applies to a particular application. As well as the latest version of the Rules, the Rules in force at the date of an application and potentially a range of statements of changes must be analysed to determine whether previous Rules apply. Transitional provisions can prove to be decisive of the fate of applications.

13.19 Transitional arrangements were discussed in *Edgehill v Secretary of State for the Home Department*.[458] The transitional provisions in question, in the implementation provisions of the statement of changes to the Immigration Rules HC 194, removed the ability of applicants to apply for leave to remain in the United Kingdom on the basis of 14 years' continuous residence.[459] The statement of changes to the Rules, by way of paragraph 87, introduced paragraph 276ADE which increased the required length of continuous residence to 20 years. The implementation provisions in HC 194 were as follows:

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458 *Edgehill v Secretary of State for the Home Department* [2014] EWCA Civ 402.

459 *Edgehill v Secretary of State for the Home Department* [2014] EWCA Civ 402 at [5] by Jackson LJ; old para 276B.

> With the exception of paragraphs 6 to 72, 74 to 80, 82, 86, 88 to 90, 93, 97, 98, 100, 102, 103 and 106 the changes set out in this Statement shall take effect on 9 July 2012. Paragraphs 6 to 72, 74 to 80, 82, 86, 88 to 90, 93, 97, 98, 100, 102, 103 and 106 shall take effect on 1 October 2012.
>
> However, if an application for entry clearance, leave to remain or indefinite leave to remain has been made before 9 July 2012 and the application has not been decided, it will be decided in accordance with the rules in force on 8 July 2012.

13.20 The issue was whether it was lawful to reject an Article 8 application made before 9 July 2012 in reliance upon the applicant's failure to achieve 20 years' residence, as required by the new Rules.[460] The Secretary of State argued that her current policy on what length of past residence should be recognised should prevail.[461] This submission was rejected because it would lead to the "bizarre result" that the transitional provisions did not prevent the new Rules applying to earlier applications. The court pointed out that "the Immigration Rules need to be understood not only by specialist immigration counsel, but also by ordinary people who read the Rules and try to abide by them".[462] The transitional provisions were held to apply, and so reliance on the new Rules to decide cases prior to 9 July 2012 was held to be unlawful.[463]

13.21 The transitional provisions in HC 194 were revisited in the case of *Singh v Secretary of State for the Home Department*.[464] One month after *Edgehill*, in the case of *Haleemudeen v Secretary of State for the Home Department*, the argument advanced by the Secretary of State unsuccessfully in *Edgehill* had been accepted.[465] Clarification was sought.

13.22 Mr Singh's application for indefinite leave to remain under Article 8 and the 10-year route was made on 30 March 2006 and dealt with by the UKBA on 25 October 2012.[466] It had to be decided whether the Rules prior to 9 July 2012 (HC 194) were applicable. Lord Justice Underhill concluded that:

> If the outcome … depended on making a choice between *Edgehill* and *Haleemudeen* I would follow *Edgehill* … [T]he truth is that *Haleemudeen* was decided *per incuriam* because of the failure to draw the Court's attention to the implementation provision; and in those circumstances I think that the better view is that we should treat ourselves as bound by *Edgehill*. But even if we were free to make a choice, I find Lord Justice Jackson's reasoning persuasive. The language of

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460 *Edgehill v Secretary of State for the Home Department* [2014] EWCA Civ 402 at [21] by Jackson LJ.

461 *Edgehill v Secretary of State for the Home Department* [2014] EWCA Civ 402 at [30] by Jackson LJ. See also s 85(4) of the Nationality, Immigration and Asylum Act 2002 which states that: "the Tribunal may consider evidence about any matter which it thinks relevant to the substance of the decision, including evidence which concerns a matter arising after the date of the decision".

462 *Edgehill v Secretary of State for the Home Department* [2014] EWCA Civ 402 at [32] by Jackson LJ.

463 *Edgehill v Secretary of State for the Home Department* [2014] EWCA Civ 402 at [34] to [37] by Jackson LJ.

464 *Singh v Secretary of State for the Home Department* [2015] EWCA Civ 74, [2015] WLR(D) 66.

465 *Haleemudeen v Secretary of State for the Home Department* [2014] EWCA Civ 558.

466 *Singh v Secretary of State for the Home Department* [2015] EWCA Civ 74, [2015] WLR(D) 66 at [17] by Underhill LJ.

the implementation provision would, as he says, convey to any ordinary person who consulted the Statement of Changes that he or she could ignore it if their application was made prior to 9 July 2012.[467]

13.23 However, there was a further complication that, on 6 September 2012, a new statement of changes to the Immigration Rules HC 565 had been promulgated, further changing the relevant provisions. The new statement of changes did not include transitional arrangements and therefore, in accordance with *Odelola*, applied to pending applications. In HC 565, paragraph A277C was introduced which at the time[468] stated that:

> Subject to paragraphs A277 to A280 and paragraph GEN.1.9. of Appendix FM of these rules, where the Secretary of State is considering any application to which the provisions of Appendix FM (family life) and paragraphs 276ADE to 276DH (private life) of these rules do not already apply, she will also do so in line with those provisions.

13.24 It was held that HC 565 did not need explicitly to amend the previous transitional provisions set out in the implementation section of HC 194; the effect of HC 565 was to supersede them. However, the new Rules would not apply retrospectively and so decisions made on applications made before 9 July which were taken between 9 July and 6 September 2012 should be made under the Rules in force on 8 July.[469]

13.25 The unsatisfactory result of the transitional provisions was summarised in the following way by Lord Justice Underhill:

> I should observe that both the decisions with which this Court was concerned in *Edgehill* were made after 5 September 2012 … outside the window referred to above. It follows that, although its reasoning about the effect of HC 194 was, I believe, correct, the outcome would have been different if it had been referred to the changes introduced by HC 565 – which it was not … That is rather remarkable. It appears that one of the (admittedly many) objects of HC 565 was to "clarify" that the provisions of Appendix FM and paragraphs 276ADE–276DH should apply to pending applications; yet in a case which raised that very issue the Secretary of State neglected to rely on it … I fear that the true explanation is that the responsible officials in the Home Office have at least some of the same difficulties in keeping up with the consequences of the kaleidoscopic changes in their own Rules as the rest of us do.[470]

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467 *Singh v Secretary of State for the Home Department* [2015] EWCA Civ 74, [2015] WLR(D) 66 at [41].

468 Para A277C was further amended by statement of changes HC 760 with effect from 13 December 2012. The substituted version was the subject of the criticisms by Underhill LJ set out in Chapter 1 at para 1.5 above.

469 *Singh v Secretary of State for the Home Department* [2015] EWCA Civ 74, [2015] WLR(D) 66 at [49] by Underhill LJ.

470 *Singh v Secretary of State for the Home Department* [2015] EWCA Civ 74, [2015] WLR(D) 66 at [57] by Underhill LJ.

13.26 In a non-binding part of the judgment, Lord Justice Underhill stated that where there is an inconsistency between transitional provisions in the statement of changes and the Rules themselves, the transitional provisions should prevail.[471]

Interaction between Part 8 and Appendix FM

13.27 A further example of the complexities to which transitional provisions can give rise is the complex interaction between Part 8 (Family members) and Appendix FM. Paragraph A277 helps to explain this relationship. Paragraph A277 states that:

> From 9 July 2012 Appendix FM will apply to all applications to which Part 8 of these Rules applied on or before 8 July 2012 except where the provisions of Part 8 are preserved and continue to apply, as set out in paragraphs A280 to A280B.

13.28 One example of where Part 8 continues to apply to new applicants is paragraphs 309A to 316F of Part 8. These are the Rules covering the entry, stay and settlement of adopted children of settled persons (and in relation to the entry of children for adoption).

13.29 Paragraph A280(a) provides that certain paragraphs in Part 8 "apply in respect of all applications made under Part 8 and Appendix FM, irrespective of the date of application or decision".[472]

13.30 By way of example of the effect of this, paragraph 277 of Part 8 states that:

> Nothing in these Rules shall be construed as permitting a person to be granted entry clearance, leave to enter, leave to remain or variation of leave as a spouse or civil partner of another if either the applicant or the sponsor will be aged under 18 on the date of arrival in the United Kingdom or (as the case may be) on the date on which the leave to remain or variation of leave would be granted. In these rules the term "sponsor" includes "partner" as defined in GEN 1.2 of Appendix FM.

13.31 Paragraph A280(a) makes this provision applicable to Appendix FM as well as to Part 8.

13.32 Paragraph A280(b) contains a list of other paragraphs of Part 8 that continue to apply to Appendix FM, but subject to "additional requirements", which are set out in a table. The additional requirements in paragraph A280(b) do not apply to applications made prior to 9 July 2012.

13.33 The terms of paragraph A280 are complex. In respect of paragraphs 309A to 316F of Part 8, the adoption provisions, paragraph A280(b) stipulates that:

> Where: (1) the applicant: falls under paragraph 314(i)(a); or falls under paragraph 316A(i)(d) or (e); and is applying on or after 9 July 2012; and (2) the "other parent" mentioned in paragraph 314(i)(a), or one of the prospective parents mentioned in paragraph 316A(i)(d) or (e), has or is applying for entry clearance or limited leave to

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471 *Singh v Secretary of State for the Home Department* [2015] EWCA Civ 74, [2015] WLR(D) 66 at [43] by Underhill LJ.

472 These are paras 277 to 280, 289AA, 295AA and 296.

remain as a partner under Appendix FM the application must also meet the requirements of paragraphs E-ECC 2.1-2.3 (entry clearance applications) or E-LTRC 2.1-2.3 (leave to remain applications) of Appendix FM.

Discussion

13.34 The transitional arrangements present difficulties in practice. The interaction between different statements of changes, and their relationship with provisions in the Rules themselves, can be complex. We consider that there would be merit in clarifying this relationship and making it more transparent.

13.35 First, it is important that statements of changes to the Rules and the Rules themselves are consistent. Implementation dates should not be contradicted by transitional arrangements included in the Rules themselves. This would avoid the situation which Lord Justice Underhill describes in the judgment quoted above.

13.36 Secondly, where an implementation provision in a statement of changes affects an implementation in a previous statement of changes, we seek views on whether this should be explained in the implementation provisions as well as the memorandum to the statements of changes. For example, HC 565 could have stated that:

> the changes set out in HC 565 will apply to all pending applications regardless of whether they were made before 9 July 2012. The effect of any relevant transitional provisions in HC 194 will cease on 6 September 2012.

13.37 Alternatively, or in addition to this, there could be a dedicated section in the statement of changes to the Rules which would address amendments to past transitional arrangements.

13.38 The online Immigration New Zealand Operational Manual, which is in many ways equivalent to the UK Immigration Rules, breaks up its provisions into shorter pages of text covering distinct sets of requirements. These pages include, at the bottom, the most recent date that the requirements on the page changed (for example, "Effective 26/01/2015"), together with a list of links to previous versions of that page.[473] Clarity is assisted by the fact that under New Zealand law, in relation to residence categories, the rules that apply are those in force at the date of the filing of the application.[474]

13.39 If the booklet approach to the organisation of the Rules were to be adopted, or a modified form of it permitting parts of the Rules to be as free-standing as possible, it might be possible to adopt a more radical approach to amendment. This would replace each part or sub-part as a whole every time a substantial change occurred. A clear introductory statement could be inserted stipulating the dates from which that republished part applied. Previous versions of each part, with dates to which they applied also clearly labelled, could be archived digitally on the site through which users gain access to the Rules.

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[473] See for example section N2.1 "Who must apply for a transit visa?" https://www.immigration.govt.nz/opsmanual/#34910.htm (last visited 14 September 2018)

[474] https://rykenlaw.nz/wp-content/uploads/2016/06/100903.-The-Role-of-Policy-in-New-Zealands-Immigration-Law.-mw.pdf (last visited 11 January 2019).

13.40 We would welcome views on whether dates of entry into force or expiry of Rules should be signalled through the Rules themselves or whether it would be preferable to explain this elsewhere, for example through a comprehensive archiving system as discussed below.

Consultation Question 46.

13.41 How can the temporal application of statements of changes to the Immigration Rules be made easier to ascertain and understand?

ARCHIVING

13.42 In the *Singh* case in 2015, Lord Justice Underhill observed that:

> It is not uncommon for advisers in this field to need to know what the effect of the Rules was at some date in the past: despite the principle recognised in *Odelola*, historical information of this kind may be relevant in a variety of circumstances.[475]

13.43 The Home Office now arranges for previous consolidated versions of the Rules (dating back to 9 July 2012) to be archived and made available through a hyperlink at the top of the Gov.uk Immigration Rules page. The archive includes each version of the consolidated Rules that was in force between each new implementation date set out in statements of changes over the period it covers.

13.44 However, there can be delays in archiving previous versions of the consolidated Rules. For example, the Rules in force until 14 January, 5 April and 5 July 2018 were added to the archive simultaneously on 13 July 2018.[476]

13.45 In addition, there is no facility which enables the comparison of different sets of historic Rules. This has to be done manually.

13.46 There is also an appendix to the Immigration Rules, Appendix F (Archived Immigration Rules) containing the text of some superseded Rules. The appendix is referred to in Part 6 (Self-employment and business), which indicates that all the Rules in Appendix F were deleted in June 2008 except insofar as relevant to particular paragraphs in Part 6. Those paragraphs themselves are now deleted (with the result that Part 6 contains no extant paragraphs at all).

13.47 In addition, Part 7 (Other categories) contains Rules governing Armed Forces cases antedating 1 December 2013.[477]

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475 *Singh v Secretary of State for the Home Department* [2015] EWCA Civ 74, [2015] WLR(D) 66 at [58].

476 https://www.gov.uk/government/collections/archive-immigration-rules (last visited 11 January 2019). Sometimes the delay is only a matter of days.

477 Paras 276DI to 276AI.

Discussion

13.48 The system of archiving is an important aspect of how the Rules work in practice. We would welcome views on how the system of archiving could be made more effective for users. Ideally, when Rules are replaced, the old Rules should be archived immediately. If delays are caused through converting the Rules from their online format to PDFs, then the Rules could be archived in their online format until they are converted. We would welcome further views on this.

13.49 Further, we seek views on whether the Home Office should establish (either directly or by commissioning a third party) a new archiving system which would be free to members of the public and would contain a search facility. This would enable a user to search for a given Rule and access all previous versions with their dates of application. However, this would have cost implications for the Home Office and there may be a reluctance to establish such a scheme. Alternatively, setting out the dates of commencement in the Rules themselves would enable the dates of application of Rules to be ascertained from versions archived in the current manner. This could be potentially supplemented by archives of previous versions of each Part, accessed via a link at the bottom of the Part page, or, with greater precision, at the foot of each page containing a specific set of requirements, as in the New Zealand Operational Manual.

Consultation Question 47.

13.50 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?

13.51 It appears to us that Appendix F (Archived Immigration Rules) currently performs no useful function, save possibly in relation to indefinite leave applications in routes which are otherwise closed. We provisionally consider that it can be omitted from the redrafted Rules. It can still be found in earlier versions of the Rules accessible in the archive referred to in paragraph 13.43 above. Similarly, the old Armed Forces rules in Part 7 (Other categories) can be found in the existing archive.

Consultation Question 48.

13.52 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?

FREQUENCY OF CHANGES

13.53 In the past, many stakeholders have noted the tendency of the Home Office to introduce changes to the Rules on a frequent basis. For example, in 2013 alone, there were 12 sets of changes made to the Rules. There were also 12 sets of changes affecting the Tier 2 (General) category between 6 April 2012 and 6 April 2017.

Reasons for the frequency of statements of changes have included the Home Office's need to implement, or to respond to, judicial rulings. There may also be a need to make changes in light of pressing policy or operational considerations, including in response to feedback from applicants, sponsors, caseworkers and other Home Office staff.

13.54 However, after 2015 the frequency of changes to the Immigration Rules decreased. We are informed that this is the result of the Home Office's intention to make the changes more manageable. In 2016, for example, there were only two statements of changes to the Rules.[478] There were three in 2017[479], and in 2018 there were six.[480] We understand it to be current Home Office policy that (except in emergencies) only two statements of changes should be introduced each year. These are generally introduced in line with common commencement dates in April and October.

Discussion

13.55 Clearly, it is important to be able to make changes to the Rules. However, if changes are introduced too frequently it can be difficult for Home Office caseworkers, applicants and legal practitioners to keep up to date with developments.

13.56 We would welcome further views on the frequency of changes in the Rules. Our provisional view is that the current system might be maintained whereby the Home Office adheres to two major changes to the Rules per year unless it there is an urgent need to amend the Rules at another time. But there may be useful further reforms that could be considered.

Consultation Question 49.

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

Consultation Question 50.

13.58 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?

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478 See statement of changes to the Immigration Rules HC 877, 11 March 2016 and statement of changes to the Immigration Rules HC 667, 3 November 2016.

479 See statements of changes to the Immigration Rules HC 1078, 16 March 2017; HC 290, 20 July 2017; HC 309, 7 December 2017.

480 See statements of changes to the Immigration Rules HC 895, 15 March 2018; HC 1154, 15 June 2018; CM 9675, 20 July 2018; HC 1534, 11 October 2018; HC 1779, 11 December 2018; HC 1849, 20 December 2018.

Chapter 14: How can technology be used to improve the applicant's experience of the Immigration Rules?

14.1 The Immigration Act 1971 envisages the Immigration Rules as being set out in a paper document laid before Parliament, but the reality is that they are increasingly viewed online. Younger generations increasingly expect to operate digitally rather than on paper. Simplification of the Rules could encourage and facilitate technological developments. It would need to be ensured that the presentation of the Rules was compatible with the digital infrastructure in the countries from which applicants may be applying.

14.2 In this chapter we consider the opportunities offered by online presentation of the Rules and of guidance, and the potential for a more integrated online application system.

ONLINE PRESENTATION OF THE RULES

14.3 Proposals to simplify the Immigration Rules need to take into consideration the increasing use of the Rules online. A feature of online presentation is that, with imaginative use of how the Rules are displayed, the overall length of the Rules is less of an issue. An initial screen showing a "route map" of the Rules could guide users to the Parts relevant to them.[481] If the booklet approach discussed in chapters 7 and 8 were adopted, the route map could take the user to the booklet relevant to them. A single set of Rules could also be made more accessible online.

14.4 At present, the online presentation of the Rules is as a sequence of provisions which the reader has to scroll through. In future, the Rules could be displayed with smaller portions on the screen, accompanied by hyperlinks or sidebars to navigate between requirements. In practice, with effective hyperlinks, the navigation of a single set of Rules might not differ significantly from the booklet approach.[482]

14.5 The problems raised by the need to organise definitions accessibly are discussed in chapter 8. Hyperlinks could assist in taking the user to a list of definitions applicable to the category in which they are applying. The need to cross-refer could be removed entirely by using hover boxes to display definitions over bold text.

14.6 The Home Office is not able to use legislation.gov.uk to host the Rules in their present form, for reasons of technical incompatibility. However, a more streamlined approach

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481 The National Audit Office report, *Handling of the Windrush Situation*, 5 December 2018, cites Home Office proposals to create an online landing page to assist users to understand the options open to them from the outset: https://www.nao.org.uk/wp-content/uploads/2018/12/Handling-of-the-Windrush-situation-1.pdf (last viewed 24 December 2018), p 40.

482 Work by legislation.gov as to how people use legislation shows that users prefer information in clearly labelled portions of text with hyperlinks to related parts such as appendices and external material such as regulations.

to their drafting might make this possible. It could also permit the use of a template designed for legislation that is viewed online. Features of it include a tool which identifies where hyperlinks should be placed, and numbering and indentation functions.

Consultation Question 51.

14.7 Could a common provisions approach to the presentation of the Immigration Rules function as effectively as the booklet approach through the use of hyperlinks?

INTERFACE BETWEEN THE RULES AND GUIDANCE

14.8 We have discussed the importance of the relationship between the Rules and guidance. Chapter 6 considered how the Rules might be made less prescriptive, and noted that this might involve some provisions which currently have the character of mandatory requirements being replaced by guidance.

14.9 Better coordination between Rules and guidance could assist the applicant to access all material relevant to their applications. They could be combined into one interface by using the existing Gov.uk platform and making better use of hyperlinks or sidebars. We seek views.

Consultation Question 52.

14.10 We seek views on whether and how guidance can more clearly be linked to the relevant Immigration Rules.

ONLINE APPLICATION PLATFORMS

14.11 It has for a number of years been possible to apply for leave online. There have been criticisms of the current online application process. It can be difficult to locate the correct application form. An inability to see information and upcoming questions until after the registration process has been completed and individual questions answered in sequence is a further obstacle. The new streamlined in-country application process originally scheduled for introduction on 5 November 2018, and now to be implemented on a phased basis from November 2018, may go some way towards resolving these issues.

14.12 Technology offers the prospect of ‘smart forms’. Techniques such as data analysis and insights could be used to create a more user-friendly online process by pointing applicants to the relevant Rules, or to supplementary external material such as guidance, while the online application is in process. The forms could also signpost

alternative application routes.[483] It should be noted however that an online process which does not allow an application to progress because of a lack of a particular document could be problematic. It may be, for example, that an alternative document would be acceptable, but that the online process is unable to exercise a discretion to accept it.[484]

14.13 As digital application processes develop, it will be important to ensure that the Rules are drafted to provide a suitable technical foundation. Chapter 6 considers the new Appendix EU, which has been drafted with a view to underpinning a user-friendly digital application process.

14.14 Changes to the Rules in October 2018 support the new online application processes by enabling documents such as passports to be copied and sent to UK Visas and Immigration at appointment centres rather than requiring the submission of original documents. These changes are described at paragraphs 4.36 to 4.38 above.

Consultation Question 53.

14.15 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?

TOOLS WHICH GUIDE APPLICANTS

14.16 In the longer term, more flexible systems may enable easier interaction where information or evidence is missing and alert applicants to defective applications at the submission stage. This can save time and costs both for the applicant and the decision-maker.

14.17 It may also be possible to develop an interactive tool which sequences the exact set of rules which apply to an applicant within a particular route. The answers to a series of drop-down questions about, for example, the category into which applicants fall, the type of leave sought, and their nationality, would enable the tool to isolate the relevant Rules and common provisions, drawing them together into an individual booklet.[485] A tool already operates for entry clearance applications to allow applicants to check whether they need a visa by answering drop down questions.

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483 See the proposal in National Audit Office, *Handling of the Windrush Situation*, 5 December 2018 at p 40: https://www.nao.org.uk/wp-content/uploads/2018/12/Handling-of-the-Windrush-situation-1.pdf (last visited 24 December 2018).

484 Experience gained in the recent development by HMCTS of online divorce forms could be useful. See https://www.gov.uk/government/news/fully-digital-divorce-application-launched-to-the-public (press release dated 6 May 2018) reporting a user satisfaction rate of over 90% and a reduction in the proportion of divorce applications rejected at the first stage due to the forms not being complete or missing documents from 40% to less than 1%.

485 See, for example, https://www.immigration.govt.nz/new-zealand-visas (last visited 11 January 2019).

DISCUSSION

14.18 This consultation paper seeks consultees' views in order to help us articulate recommendations which lead to a significant simplification of the Immigration Rules. However, making the Rules simpler will not eradicate complexity altogether, either for applicants or for the Home Office officials who administer the system.

14.19 Existing and imminent developments in digital technology may hold the key to simplifying the *process* of application for users. To take an example, we discussed the possibility of a less prescriptive approach to the Rules in chapter 6. If this were adopted, the Rules would be simpler to navigate, but some provisions currently in the Rules would be recast into examples contained in guidance. Some may take the view that that simply displaces complexity, and that it is better for all provisions to be contained in a single document. They may conclude that it is better for the Rules to contain absolutely every provision an applicant might need to refer to. The issue for the user then becomes how to navigate what will be a very long rulebook.

14.20 While applicants may well want to be told everything they need to know in a single document, we suspect that most would, in practice, prefer to be told all information *relevant* to their case, and none that is not. A long and complex rulebook may well contain that information, but an applicant will need to be guided to the relevant provisions. Even if a particular Part of the Rules appears as a booklet online, there may be too great a set of permutations for the grant of leave to permit most ordinary readers to focus on the provisions most relevant to them. That particular skill tends to be the province of specialists, be they officials, immigration advisers, or lawyers.

14.21 We think it worth exploring what the impact on this simplification project should be of the smarter digital platforms emerging in the future. These might, effectively, merge the applications process so that it:

(1) helps channel applicants into the correct provision under which to apply;

(2) directs the reader into what effectively amounts to a "mini-booklet", providing them with the content of the Rule and Guidance together;

(3) prompts the applicant to provide the necessary evidence;

(4) alerts the applicant if there is something missing, holding the application open in a digital 'space' while issues of omission of information or evidence are resolved and thus avoiding the submission of incomplete or defective applications; and/or

(5) permits decision-makers to verify information more flexibly

14.22 The above is intended to give a flavour of what might be possible. Of course, technology brings risks – of unforeseen failure, or of introducing a new form of bureaucratic rigidity. But we would find it useful to hear from consultees as to whether some or all of the aims of this simplification project could be assisted by a smarter use of digital technology.

Consultation Question 54.

14.23 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?

Chapter 15: Consultation Questions

Consultation Question 1.

15.1 Do consultees agree that there is a need for an overhaul of the Immigration Rules?

Paragraph 1.43

Consultation Question 2.

15.2 Do consultees agree with the principles we have identified to underpin the drafting of the Immigration Rules?

Paragraph 1.44

Consultation Question 3.

15.3 We provisionally consider that the Immigration Rules should be drafted so as to be accessible to a non-expert user.

Do consultees agree?

Paragraph 1.45

Consultation Question 4.

15.4 To what extent do consultees think that complexity in the Immigration Rules increases the number of mistakes made by applicants?

Paragraph 1.46

Consultation Question 5.

15.5 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?

Paragraph 1.47

Consultation Question 6.

15.6 Do consultees agree that the unique status of the Immigration Rules does not cause difficulties to applicants in practice?

Paragraph 3.22

Consultation Question 7.

15.7 To what extent is guidance helpfully published, presented and updated?

Paragraph 4.29

Consultation Question 8.

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

Paragraph 4.30

Consultation Question 9.

15.9 To what extent are application forms accessible? Could the process of application be improved?

Paragraph 4.46

Consultation Question 10.

15.10 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.

Paragraph 5.53

Consultation Question 11.

15.11 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.

Paragraph 5.54

Consultation Question 12.

15.12 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.

Paragraph 5.55

Consultation Question 13.

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

Paragraph 6.72

Consultation Question 14.

15.14 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.

Paragraph 6.91

Consultation Question 15.

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

Paragraph 6.92

Consultation Question 16.

15.16 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).

Paragraph 6.93

Consultation Question 17.

15.17 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.

Paragraph 6.94

Consultation Question 18.

15.18 Our analysis suggests that, in deciding whether a particular provision in the Immigration Rules should be less prescriptive, the Home Office should consider:

(1) the nature and frequency of changes made to that provision for a reason other than a change in the underlying policy;

(2) whether the provision relates to a matter best left to the judgement of officials, whether on their own or assisted by extrinsic guidance or other materials.

Do consultees agree?

Paragraph 6.95

Consultation Question 19.

15.19 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”?

Paragraph 6.96

Consultation Question 20.

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

Paragraph 8.16

Consultation Question 21.

15.21 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?

Paragraph 8.34

Consultation Question 22.

15.22 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?

Paragraph 8.35

Consultation Question 23.

15.23 Are there any advantages and disadvantages of the booklet approach which we have not identified?

Paragraph 8.36

Consultation Question 24.

15.24 Are there any advantages and disadvantages of the common provisions approach which we have not identified?

Paragraph 8.37

Consultation Question 25.

15.25 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?

Paragraph 8.38

Consultation Question 26.

15.26 We provisionally propose that:

(1) definitions should be grouped into a definitions section, either in a single set of Immigration Rules or in a series of booklets, in which defined terms are presented in alphabetical order;

(2) terms defined in the definitions provision should be identified as such by a symbol, such as # when they appear elsewhere in the text of the Immigration Rules.

Do consultees agree?

Paragraph 8.50

Consultation Question 27.

15.27 We provisionally propose that the following principles should be applied to titles and subheadings in the Immigration Rules:

(1) there should be one title, not a title and a subtitle;

(2) the titles given in the Index and the Rules should be consistent;

(3) titles and subheadings should give as full an explanation of the contents as possible, consistently with keeping them reasonably short;

(4) titles and subheadings should not run into a second line unless necessary; and

(5) titles and subheadings should avoid initials and acronyms.

Do consultees agree?

Paragraph 9.14

Consultation Question 28.

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

Paragraph 9.15

Consultation Question 29.

15.29 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?

Paragraph 9.23

Consultation Question 30.

15.30 Do consultees have a preference between overviews and tables of contents at the beginning of Parts?

Paragraph 9.24

Consultation Question 31.

15.31 We provisionally propose the following numbering system for the Immigration Rules:

(1) paragraphs should be numbered in a numerical sequence;

(2) the numbering should re-start in each Part;

(3) it should be possible to identify from the numbering system the Part within which a paragraph falls, the use of multilevel numbering commencing with the Part number;

(4) the numbering system should descend to three levels (1.1.1 and so on) with the middle number identifying a section within a Part; and

(5) letters should be used for sub-paragraphs and lower case Roman numerals for sub-sub-paragraphs.

Do consultees agree?

Paragraph 9.39

Consultation Question 32.

15.32 We provisionally propose that Appendices to the Immigration Rules are numbered in a numerical sequence.

Do consultees agree?

Paragraph 9.40

Consultation Question 33.

15.33 We provisionally propose that text inserted into the Immigration Rules should be numbered in accordance with the following system:

(1) new whole paragraphs at the beginning of a Part should have a number preceded by a letter, starting with "A" (A1, B1, C1 and so on). A rule inserted before "A1" should be "ZA1";

(2) new lettered sub-paragraphs, inserted before a sub-paragraph (a) should be (za), (zb) and so on, and paragraphs inserted before (za) should be (zza), (zzb) and so on;

(3) where text is added to the end of existing text at the same level, the numbering should continue in sequence;

(4) new whole paragraphs inserted between existing paragraphs should be numbered as follows:

(a) new paragraphs inserted between 1 and 2 should be 1A, 1B, 1C and so on;

(b) new paragraphs inserted between 1A and 1B should be 1AA, 1AB, 1AC and so on;

(c) new paragraphs inserted between 1 and 1A should be 1ZA, 1ZB, 1ZC and so on (and not 1AA and so on); and

(d) new provisions inserted between 1A and 1AA should be 1AZA, 1AZB, 1AZC and so on;

(5) a lower level identifier should not be added unless necessary; and

(6) after Z or z, the sequence Z1, Z2, Z3 and so on or z1, z2, z3 and so on should be used.

Do consultees agree?

Paragraph 9.41

Consultation Question 34.

15.34 Should the current Immigration Rules be renumbered as an interim measure?

Paragraph 9.42

Consultation Question 35.

15.35 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?

Paragraph 9.43

Consultation Question 36.

15.36 We provisionally propose that definitions should not be used in the Immigration Rules as a vehicle for importing requirements.

Do consultees agree?

Paragraph 10.11

Consultation Question 37.

15.37 We provisionally propose that, where possible, paragraphs of the Immigration Rules:

(1) should be self-standing, avoiding cross-reference to other paragraphs unless strictly necessary; and

(2) should state directly what they intend to achieve.

Do consultees agree?

Paragraph 10.26

Consultation Question 38.

15.38 We provisionally consider that:

(1) appropriate signposting to other portions of the Rules and relevant legislation is desirable in the Immigration Rules;

(2) where the other portion of the Rules or the legislation in question already applies to the case, the signposting should be phrased so as to draw attention to the other material and should avoid language that purports to make the other material applicable where it already is;

(3) where portions of the Rules use signposting, they should do so consistently.

Do consultees agree?

Paragraph 10.36

Consultation Question 39.

15.39 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.

Paragraph 10.44

Consultation Question 40.

15.40 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?

Paragraph 10.55

Consultation Question 41.

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

Paragraph 11.26

Consultation Question 42.

15.42 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?

Paragraph 11.27

Consultation Question 43.

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

Paragraph 12.24

Consultation Question 44.

15.44 We seek views on whether informal consultation or review of the drafting of the Immigration Rules would help reduce complexity.

Paragraph 12.25

Consultation Question 45.

15.45 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?

Paragraph 13.12

Consultation Question 46.

15.46 How can the temporal application of statements of changes to the Immigration Rules be made easier to ascertain and understand?

Paragraph 13.41

Consultation Question 47.

15.47 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?

Paragraph 13.50

Consultation Question 48.

15.48 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?

Paragraph 13.52

Consultation Question 49.

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

Paragraph 13.57

Consultation Question 50.

15.50 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?

Paragraph 13.58

Consultation Question 51.

15.51 Could a common provisions approach to the presentation of the Immigration Rules function as effectively as the booklet approach through the use of hyperlinks?

Paragraph 14.7

Consultation Question 52.

15.52 We seek views on whether and how guidance can more clearly be linked to the relevant Immigration Rules.

Paragraph 14.10

Consultation Question 53.

15.53 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?

Paragraph 14.15

Consultation Question 54.

15.54 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?

Paragraph 14.23

Appendix 1: Part 9 (Grounds for refusal) of the Immigration Rules

(As at May 2018 when the appendix 3 redraft was compiled)

Immigration Rules part 9: grounds for refusal

General grounds for the refusal of entry clearance, leave to enter or variation of leave to enter or remain in the United Kingdom (paragraphs A320 to 324).

Refusal of entry clearance or leave to enter the United Kingdom

A320. Paragraphs 320 (except subparagraph (3), (10) and (11)) and 322 do not apply to an application for entry clearance, leave to enter or leave to remain as a Family Member under Appendix FM, and Part 9 (except for paragraph 322(1)) does not apply to an application for leave to remain on the grounds of private life under paragraphs 276ADE-276DH.

B320(1). Subject to sub-paragraph (2), paragraphs 320 (except sub-paragraphs (3), (7B),(10) and (11)) and 322 (except sub-paragraphs (2), (2A) and (3)) do not apply to an application for entry clearance, leave to enter or leave to remain under Appendix Armed Forces.

(2) As well as the sub-paragraphs mentioned above, sub-paragraph (13) of paragraph 320 also applies to applications for entry clearance, leave to enter or leave to remain under Part 9, 9A or 10 of Appendix Armed Forces.

C320. Part 9 does not apply to applications made under Appendix V.

320. In addition to the grounds of refusal of entry clearance or leave to enter set out in Parts 2-8 of these Rules, the following grounds for the refusal of entry clearance or leave to enter apply:

Grounds on which entry clearance or leave to enter the United Kingdom is to be refused

(1) the fact that entry is being sought for a purpose not covered by these Rules;

(2) the fact that the person seeking entry to the United Kingdom:

(a) is currently the subject of a deportation order; or

(b) has been convicted of an offence for which they have been sentenced to a period of imprisonment of at least 4 years; or

(c) has been convicted of an offence for which they have been sentenced to a period of imprisonment of at least 12 months but less than 4 years, unless a period of 10 years has passed since the end of the sentence; or

(d) has been convicted of an offence for which they have been sentenced to a period of imprisonment of less than 12 months, unless a period of 5 years has passed since the end of the sentence.

(2A) DELETED

(3) failure by the person seeking entry to the United Kingdom to produce to the Immigration Officer a valid national passport or other document satisfactorily establishing his identity and nationality save that the document does not need to establish nationality where it was issued by the national authority of a state of which the person is not a national and the person's statelessness or other status prevents the person from obtaining a document satisfactorily establishing the person's nationality;

(4) failure to satisfy the Immigration Officer, in the case of a person arriving in the United Kingdom or seeking entry through the Channel Tunnel with the intention of entering any other part of the common travel area, that he is acceptable to the immigration authorities there;

(5) failure, in the case of a visa national, to produce to the Immigration Officer a passport or other identity document and to have entry clearance for the purpose for which entry is sought;

(6) where the Secretary of State has personally directed that the exclusion of a person from the United Kingdom is conducive to the public good;

(7) save in relation to a person settled in the United Kingdom or where the Immigration Officer is satisfied that there are strong compassionate reasons justifying admission, confirmation from the Medical Inspector that, for medical reasons, it is undesirable to admit a person seeking leave to enter the United Kingdom.

(7A) where false representations have been made or false documents or information have been submitted (whether or not material to the application, and whether or not to the applicant's knowledge), or material facts have not been disclosed, in relation to the application or in order to obtain documents from the Secretary of State or a third party required in support of the application.

(7B) where the applicant has previously breached the UK's immigration laws (and was 18 or over at the time of his most recent breach) by:

(a) Overstaying;

(b) breaching a condition attached to his leave;

(c) being an Illegal Entrant;

(d) using Deception in an application for entry clearance, leave to enter or remain, or in order to obtain documents from the Secretary of State or a third party required in support of the application (whether successful or not);

unless the applicant:

(i) overstayed for-

(a) 90 days or less, where the overstaying began before 6 April 2017: or

(b) 30 days or less, where the overstaying began on or after 6 April 2017

and in either case, left the UK voluntarily, not at the expense (directly or indirectly) of the Secretary of State;

(ii) used Deception in an application for entry clearance, leave to enter or remain, or in order to obtain documents from the Secretary of State or a third party required in support of the application more than 10 years ago;

(iii) left the UK voluntarily, not at the expense (directly or indirectly) of the Secretary of State, more than 12 months ago;

(iv) left the UK voluntarily, at the expense (directly or indirectly) of the Secretary of State, more than 2 years ago; and the date the person left the UK was no more than 6 months after the date on which the person was given notice of liability for removal, or no more than 6 months after the date on which the person no longer had a pending appeal or administrative review; whichever is the later;

(v) left the UK voluntarily, at the expense (directly or indirectly) of the Secretary of State, more than 5 years ago;

(vi) was removed or deported from the UK more than 10 years ago or;

(vii) left or was removed from the UK as a condition of a caution issued in accordance with section 22 of the Criminal Justice Act 2003 more than 5 years ago.

Where more than one breach of the UK's immigration laws has occurred, only the breach which leads to the longest period of absence from the UK will be relevant under this paragraph.

320(7BB) for the purposes of calculating the period of overstaying in paragraph 320(7B)(i), the following will be disregarded:

(a) overstaying of up to 28 days, where, prior to 24 November 2016, an application for leave to remain was made during that time, together with any period of overstaying pending the determination of that application and any related appeal or administrative review;

(b) overstaying in relation to which paragraph 39E of the Immigration Rules (concerning out of time applications made on or after 24 November 2016) applied, together with any period of overstaying pending the determination of such application or any related appeal or administrative review;

(c) overstaying arising from a decision of the Secretary of State which is subsequently withdrawn, quashed, or which the Court or Tribunal has required the Secretary of State to reconsider in whole or in part, unless the challenge to the decision was brought more than three months from the date of the decision.

(7D) failure, without providing a reasonable explanation, to comply with a request made on behalf of the Entry Clearance Officer to attend for interview.

Grounds on which entry clearance or leave to enter the United Kingdom should normally be refused

(8) failure by a person arriving in the United Kingdom to furnish the Immigration Officer with such information as may be required for the purpose of deciding whether he requires leave to enter and, if so, whether and on what terms leave should be given;

(8A) where the person seeking leave is outside the United Kingdom, failure by him to supply any information, documents, copy documents or medical report requested by an Immigration Officer;

(9) failure by a person seeking leave to enter as a returning resident to satisfy the Immigration Officer that he meets the requirements of paragraph 18 of these Rules, or that he seeks leave to enter for the same purpose as that for which his earlier leave was granted;

(10) production by the person seeking leave to enter the United Kingdom of a national passport or travel document issued by a territorial entity or authority which is not recognised by Her Majesty's Government as a state or is not dealt with as a government by them, or which does not accept valid United Kingdom passports for the purpose of its own immigration control; or a passport or travel document which does not comply with international passport practice;

(11) where the applicant has previously contrived in a significant way to frustrate the intentions of the Rules by:

(i) overstaying; or

(ii) breaching a condition attached to his leave; or

(iii) being an illegal entrant; or

(iv) using deception in an application for entry clearance, leave to enter or remain or in order to obtain documents from the Secretary of State or a third party required in support of the application (whether successful or not);

and there are other aggravating circumstances, such as absconding, not meeting temporary admission/reporting restrictions or bail conditions, using an assumed identity or multiple identities, switching nationality, making frivolous applications or not complying with the re-documentation process.

(12) DELETED

(13) failure, except by a person eligible for admission to the United Kingdom for settlement, to satisfy the Immigration Officer that he will be admitted to another country after a stay in the United Kingdom;

(14) refusal by a sponsor of a person seeking leave to enter the United Kingdom to give, if requested to do so, an undertaking in writing to be responsible for that person's maintenance and accommodation for the period of any leave granted;

(16) failure, in the case of a child under the age of 18 years seeking leave to enter the United Kingdom otherwise than in conjunction with an application made by his parent(s) or legal

guardian to provide the Immigration Officer, if required to do so, with written consent to the application from his parent(s) or legal guardian; save that the requirement as to written consent does not apply in the case of a child seeking admission to the United Kingdom as an asylum seeker;

(17) save in relation to a person settled in the United Kingdom, refusal to undergo a medical examination when required to do so by the Immigration Officer;

(18) DELETED

(18A) within the 12 months prior to the date on which the application is decided, the person has been convicted of or admitted an offence for which they received a non-custodial sentence or other out of court disposal that is recorded on their criminal record;

(18B) in the view of the Secretary of State:

(a) the person's offending has caused serious harm; or

(b) the person is a persistent offender who shows a particular disregard for the law.

(19) The immigration officer deems the exclusion of the person from the United Kingdom to be conducive to the public good. For example, because the person's conduct (including convictions which do not fall within paragraph 320(2)), character, associations, or other reasons, make it undesirable to grant them leave to enter.

(20) failure by a person seeking entry into the United Kingdom to comply with a requirement relating to the provision of physical data to which he is subject by regulations made under section 126 of the Nationality, Immigration and Asylum Act 2002.

(21) DELETED

(22) where one or more relevant NHS body has notified the Secretary of State that the person seeking entry or leave to enter has failed to pay a charge or charges with a total value of at least £500 in accordance with the relevant NHS regulations on charges to overseas visitors.

(23) where the applicant has failed to pay litigation costs awarded to the Home Office.

Refusal of leave to enter in relation to a person in possession of an entry clearance

321. DELETED.

Grounds on which leave to enter or remain which is in force is to be cancelled at port or while the holder is outside the United Kingdom

321A. The following grounds for the cancellation of a person's leave to enter or remain which is in force on his arrival in, or whilst he is outside, the United Kingdom apply;

(1) there has been such a change in the circumstances of that person's case since the leave was given, that it should be cancelled; or

(2) false representations were made or false documents were submitted (whether or not material to the application, and whether or not to the holder's knowledge), or material facts were not disclosed, in relation to the application for leave; or in order to obtain documents from the Secretary of State or a third party required in support of the application or,

(3) save in relation to a person settled in the United Kingdom or where the Immigration Officer or the Secretary of State is satisfied that there are strong compassionate reasons justifying admission, where it is apparent that, for medical reasons, it is undesirable to admit that person to the United Kingdom; or

(4) where the Secretary of State has personally directed that the exclusion of that person from the United Kingdom is conducive to the public good; or

(4A) Grounds which would have led to a refusal under paragraphs 320(2), 320(6), 320(18A), 320(18B) or 320(19) if the person concerned were making a new application for leave to enter or remain (except where this sub-paragraph applies in respect of leave to enter or remain granted under Appendix Armed Forces it is to be read as if for paragraphs 320(2), 320(6), 320(18A), 320(18B) or 320(19)" it said "paragraph 8(a), (b), (c) or (g) and paragraph 9(d)"); or

(5) The Immigration Officer or the Secretary of State deems the exclusion of the person from the United Kingdom to be conducive to the public good. For example, because the person's conduct (including convictions which do not fall within paragraph 320(2)), character, associations, or other reasons, make it undesirable to grant them leave to enter the United Kingdom; or

(6) where that person is outside the United Kingdom, failure by that person to supply any information, documents, copy documents or medical report requested by an Immigration Officer or the Secretary of State.

Refusal of leave to remain, variation of leave to enter or remain or curtailment of leave

322. In addition to the grounds for refusal of extension of stay set out in Parts 2-8 of these Rules, the following provisions apply in relation to the refusal of an application for leave to remain, variation of leave to enter or remain or, where appropriate, the curtailment of leave, except that only paragraphs (1A), (1B), (5), (5A), (9) and (10) shall apply in the case of an application made under paragraph 159I of these Rules.

Grounds on which leave to remain and variation of leave to enter or remain in the United Kingdom are to be refused

(1) the fact that variation of leave to enter or remain is being sought for a purpose not covered by these Rules.

(1A) where false representations have been made or false documents or information have been submitted (whether or not material to the application, and whether or not to the applicant's knowledge), or material facts have not been disclosed, in relation to the application or in order to obtain documents from the Secretary of State or a third party required in support of the application.

(1B) the applicant is, at the date of application, the subject of a deportation order or a decision to make a deportation order;

(1C) where the person is seeking indefinite leave to enter or remain:

(i) they have been convicted of an offence for which they have been sentenced to imprisonment for at least 4 years; or

(ii) they have been convicted of an offence for which they have been sentenced to imprisonment for at least 12 months but less than 4 years, unless a period of 15 years has passed since the end of the sentence; or

(iii) they have been convicted of an offence for which they have been sentenced to imprisonment for less than 12 months, unless a period of 7 years has passed since the end of the sentence; or

(iv) they have, within the 24 months prior to the date on which the application is decided, been convicted of or admitted an offence for which they have received a non-custodial sentence or other out of court disposal that is recorded on their criminal record.

(1D) DELETED.

(1E) where the person is seeking limited or indefinite leave to remain under any Part of the Immigration Rules and –

(i) the Secretary of State has made a decision under Article 1F of the Refugee Convention to exclude the person from the Refugee Convention or under paragraph 339D of these Rules to exclude them from humanitarian protection; or

(ii) the Secretary of State has previously made a decision that they are a person to whom Article 33(2) of the Refugee Convention applies because there are reasonable grounds for regarding them as a danger to the security of the United Kingdom; or

(iii) the Secretary of State considers that they are a person to whom sub-paragraph (1E)(i) or (ii) would apply except that –

(a) the person has not made a protection claim, or

(b) the person made a protection claim which has already been finally determined without reference to Article 1F of the Refugee Convention or paragraph 339D of these Rules; or

(iv) the Secretary of State has previously made a decision that they are a person to whom Article 33(2) of the Refugee Convention applies because, having been convicted by a final judgment of a particularly serious crime, they constitute a danger to the community of the United Kingdom.

Grounds on which leave to remain and variation of leave to enter or remain in the United Kingdom should normally be refused

(2) the making of false representations or the failure to disclose any material fact for the purpose of obtaining leave to enter or a previous variation of leave or in order to obtain documents from the Secretary of State or a third party required in support of the application for leave to enter or a previous variation of leave.

(2A) the making of false representations or the failure to disclose any material fact for the purpose of obtaining a document from the Secretary of State that indicates the person has a right to reside in the United Kingdom.

(3) failure to comply with any conditions attached to the current or a previous grant of leave to enter or remain, unless leave has been granted in the knowledge of a previous breach;

(4) failure by the person concerned to maintain or accommodate himself and any dependants without recourse to public funds;

(5) the undesirability of permitting the person concerned to remain in the United Kingdom in the light of his conduct (including convictions which do not fall within paragraph 322(1C), character or associations or the fact that he represents a threat to national security;

(5A) it is undesirable to permit the person concerned to enter or remain in the United Kingdom because, in the view of the Secretary of State:

(a) their offending has caused serious harm; or

(b) they are a persistent offender who shows a particular disregard for the law;

(6) refusal by a sponsor of the person concerned to give, if requested to do so, an undertaking in writing to be responsible for his maintenance and accommodation in the United Kingdom or failure to honour such an undertaking once given;

(7) failure by the person concerned to honour any declaration or undertaking given orally or in writing as to the intended duration and/or purpose of his stay;

(8) failure, except by a person who qualifies for settlement in the United Kingdom or by the spouse or civil partner of a person settled in the United Kingdom, to satisfy the Secretary of State that he will be returnable to another country if allowed to remain in the United Kingdom for a further period;

(9) failure by an applicant to produce within a reasonable time information, documents or other evidence required by the Secretary of State to establish his claim to remain under these Rules;

(10) failure, without providing a reasonable explanation, to comply with a request made on behalf of the Secretary of State to attend for interview;

(11) failure, in the case of a child under the age of 18 years seeking a variation of his leave to enter or remain in the United Kingdom otherwise than in conjunction with an application by his parent(s) or legal guardian, to provide the Secretary of State, if required to do so, with written consent to the application from his parent(s) or legal guardian; save that the

requirement as to written consent does not apply in the case of a child who has been admitted to the United Kingdom as an asylum seeker.

(12) where one or more relevant NHS body has notified the Secretary of State that the person seeking leave to remain or a variation of leave to enter or remain has failed to pay a charge or charges with a total value of at least £500 in accordance with the relevant NHS regulations on charges to overseas visitors.

(13) where the applicant has failed to pay litigation costs awarded to the Home Office.

Grounds on which leave to enter or remain may be curtailed

323. A person's leave to enter or remain may be curtailed:

(i) on any of the grounds set out in paragraph 322(2)-(5A) above (except where this paragraph applies in respect of a person granted leave under Appendix Armed Forces "paragraph 322(2)-(5A) above" is to read as if it said "paragraph 322(2) and (3) above and paragraph 8(e) and (g) of Appendix Armed Forces"); or

(ia) if he uses deception in seeking (whether successfully or not) leave to remain or a variation of leave to remain; or

(ii) if he ceases to meet the requirements of the Rules under which his leave to enter or remain was granted; or

(iii) if he is the dependant, or is seeking leave to remain as the dependant, of an asylum applicant whose claim has been refused and whose leave has been curtailed under section 7 of the1993 Act, and he does not qualify for leave to remain in his own right, or

(iv) on any of the grounds set out in paragraphs 339A-339AC and paragraphs 339GA-339GD, or

(v) where a person has, within the first 6 months of being granted leave to enter, committed an offence for which they are subsequently sentenced to a period of imprisonment, or

(vii) if he was granted his current period of leave as the dependent of a person ("P") and P's leave to enter or remain is being, or has been, curtailed, or

(vi) if, without a reasonable explanation, he fails to comply with a request made by or on behalf of the Secretary of State under paragraph 39D

Curtailment of leave in relation to a Tier 2 Migrant, a Tier 5 Migrant or a Tier 4 Migrant

323A. In addition to the grounds specified in paragraph 323, the leave to enter or remain of a Tier 2 Migrant, a Tier 4 Migrant or a Tier 5 Migrant:

(a) is to be curtailed if:

(i) in the case of a Tier 2 Migrant or a Tier 5 Migrant:

(1) the migrant fails to commence, or

(2) the migrant ceases, or will cease, before the end date recorded on the Certificate of Sponsorship Checking Service, the employment, volunteering, training or job shadowing (as the case may be) that the migrant has been sponsored to do.

(ii) in the case of a Tier 4 Migrant:

(1) the migrant fails to commence studying with the sponsor, or

(2) the sponsor has excluded or withdrawn the migrant, or the migrant has withdrawn, from the course of studies, or

(2A) the migrant's course of study has ceased, or will cease, before the end date recorded on the Certificate of Sponsorship Checking Service, or

(3) the sponsor withdraws their sponsorship of a migrant on the doctorate extension scheme, or

(4) the sponsor withdraws their sponsorship of a migrant who, having completed a pre-sessional course as provided in paragraph 120(b) (i) of Appendix A, does not have a knowledge of English equivalent to level B2 of the Council of Europe's Common European Framework for Language Learning in all four components (reading, writing, speaking and listening) or above.

(b) may be curtailed if:

(i) the migrant's sponsor ceases to have a sponsor licence (for whatever reason); or

(ii) the migrant's sponsor transfers the business for which the migrant works, or at which the migrant is studying, to another person; and

(1) that person does not have a sponsor licence; and

(2) fails to apply for a sponsor licence within 28 days of the date of the transfer of the business; or

(3) applies for a sponsor licence but is refused; or

(4) makes a successful application for a sponsor licence, but the sponsor licence granted is not in a category that would allow the sponsor to issue a Certificate of Sponsorship or Confirmation of Acceptance for Studies to the migrant;

(iii) in the case of a Tier 2 Migrant or a Tier 5 Migrant, if the employment that the Certificate of Sponsorship Checking Service records that the migrant is being sponsored to do undergoes a prohibited change as specified in paragraph 323AA;

(iv) paragraph (a) above applies but:

(1) the migrant is under the age of 18;

(2) the migrant has a dependant child under the age of 18;

(3) leave is to be varied such that when the variation takes effect the migrant will have leave to enter or remain and the migrant has less than 60 days extant leave remaining;

(4) the migrant has been granted leave to enter or remain with another Sponsor or under another immigration category; or

(5) the migrant has a pending application for leave to remain, or variation of leave, with the UK Border Agency, or has a pending appeal under Section 82 of the Nationality, Immigration and Asylum Act 2002, or has a pending administrative review.

323AA Prohibited changes to employment for Tier 2 Migrants and Tier 5 Migrants

The following are prohibited changes, unless a further application for leave to remain is granted which expressly permits the changes:

(za) If a migrant is a Tier 2 (General) Migrant, their start date is changed to a date more than 28 days from either of the following, whichever is later:

(i) the date on which their entry clearance or leave to remain is granted; or

(ii) the start date as stated on their Certificate of Sponsorship, taking into account any changes to the start date that have been properly reported by his employer before the date on which entry clearance or leave to remain is granted.

(a) The migrant is absent from work without pay for four weeks or more in total, according to his/her normal working pattern (whether over a single period or more than one period), during any calendar year (1 January to 31 December), unless the absence from work is due to one or more of the following:

(i) maternity leave,

(ii) paternity leave,

(iii) shared parental leave;

(iv) adoption leave, or

(v) long term sick leave of one calendar month or more during any one period.

(b) The employment changes such that the migrant is working for a different employer or Sponsor, unless:

(i) the migrant is a Tier 5 (Temporary Worker) Migrant in the Government Authorised Exchange sub-category and the change of employer is authorised by the Sponsor and under the terms of the work, volunteering or job shadowing

that the Certificate of Sponsorship Checking Service records that the migrant is being sponsored to do,

(ii) the migrant is working for a different Sponsor under arrangements covered by the Transfer of Undertakings (Protection of Employment) Regulations 2006 or similar protection to continue in the same job, or

(iii) the migrant is a Tier 2 (Sportsperson) Migrant or a Tier 5 (Temporary Worker) Migrant in the creative and sporting sub-category and the following conditions are met:

(1) The migrant's sponsor is a sports club;

(2) The migrant is sponsored as a player only and is being temporarily loaned as a player to another sports club;

(3) Player loans are specifically permitted in rules set down by the relevant sports governing body listed in Appendix M;

(4) The migrant's sponsor has made arrangements with the loan club to enable the sponsor to continue to meet its sponsor duties; and

(5) The migrant will return to working for the sponsor at the end of the loan.

(c) The employment changes to a job in a different Standard Occupational Classification (SOC) code to that recorded by the Certificate of Sponsorship Checking Service, unless all of the following apply:

(i) the applicant is sponsored to undertake a graduate training programme covering multiple roles within the organisation,

(ii) the applicant is changing to a job in a different SOC code either as a part of that programme or when appointed to a permanent role with the Sponsor at the end of that programme, and

(iii) the Sponsor has notified the Home Office of the change and any change in salary.

(d) If the migrant is a Tier 2 (Intra-Company Transfer) Migrant or a Tier 2 (General) Migrant, the employment changes to a different job in the same Standard Occupational Classification code to that recorded by the Certificate of Sponsorship Checking Service, and the gross annual salary (including such allowances as are specified as acceptable for this purpose in Appendix A) is below the appropriate salary rate for that new job as specified in the Codes of Practice in Appendix J.

(e) If the migrant was required to be Sponsored for a job at a minimum National Qualification Framework level in the application which led to his last grant of entry clearance or leave to remain, the employment changes to a job which the Codes of Practice in Appendix J record as being at a lower level.

(f) If the migrant is a Tier 2 (General) Migrant and scored points from the shortage occupation provisions of Appendix A, the employment changes to a job which does not appear in the Shortage Occupation List in Appendix K.

(g) Except where (h) applies, the gross annual salary (including such allowances as are specified as acceptable for this purpose in Appendix A) reduces below:

(i) any minimum salary threshold specified in Appendix A of these Rules, where the applicant was subject to or relied on that threshold in the application which led to his current grant of entry clearance or leave to remain, or

(ii) the appropriate salary rate for the job as specified in the Codes of Practice in Appendix J, or

(iii) in cases where there is no applicable threshold in Appendix A and no applicable salary rate in Appendix J, the salary recorded by the Certificate of Sponsorship Checking Service.

(h) Other reductions in salary are permitted if the reduction coincides with a period of:

(i) maternity leave,

(ii) paternity leave,

(iii) adoption leave,

(iv) long term sick leave of one calendar month or more,

(v) working for the sponsor's organisation while the migrant is not physically present in the UK, if the migrant is a Tier 2 (Intra-Company Transfer) Migrant, or

(vi) undertaking professional examinations before commencing work for the sponsor, where such examinations are a regulatory requirement of the job the migrant is being sponsored to do, and providing the migrant continues to be sponsored during that period

Curtailment of leave in relation to a Tier 1 (Exceptional Talent) Migrant

323B. In addition to the grounds specified in paragraph 323, the leave to enter or remain of a Tier 1 (Exceptional Talent) Migrant may be curtailed if the Designated Competent Body that endorsed the application which led to the migrant's current grant of leave withdraws its endorsement of the migrant.

Curtailment of leave in relation to a Tier 1 (Graduate Entrepreneur) Migrant

323C. In addition to the grounds specified in paragraph 323, the leave to enter or remain of a Tier 1 (Graduate Entrepreneur) Migrant may be curtailed if the endorsing body that endorsed the application which led to the migrant's current grant of leave:

(a) loses its status as an endorsing institution for Tier 1 (Graduate Entrepreneur) Migrants,

(b) ceases to be a sponsor with Tier 4 Sponsor status

(c) ceases to be an A-rated Sponsor under Tier 2 or Tier 5 of the Points-Based System because its Tier 2 or Tier 5 Sponsor licence is downgraded or revoked by the UK Border Agency, or

(d) withdraws its endorsement of the migrant.

Crew members

324. A person who has been given leave to enter to join a ship, aircraft, hovercraft, hydrofoil or international train service as a member of its crew, or a crew member who has been given leave to enter for hospital treatment, repatriation or transfer to another ship, aircraft, hovercraft, hydrofoil or international train service in the United Kingdom, is to be refused leave to remain unless an extension of stay is necessary to fulfil the purpose for which he was given leave to enter or unless he meets the requirements for an extension of stay as a spouse or civil partner in paragraph 284.

Appendix 2: Appendix FM (Family Members) to the Immigration Rules

(As at May 2018 when the appendix 4 redraft was compiled)

Immigration Rules Appendix FM: family members

Family members

General

Section GEN: General

Purpose

GEN.1.1. This route is for those seeking to enter or remain in the UK on the basis of their family life with a person who is a British Citizen, is settled in the UK, or is in the UK with limited leave as a refugee or person granted humanitarian protection (and the applicant cannot seek leave to enter or remain in the UK as their family member under Part 11 of these rules). It sets out the requirements to be met and, in considering applications under this route, it reflects how, under Article 8 of the Human Rights Convention, the balance will be struck between the right to respect for private and family life and the legitimate aims of protecting national security, public safety and the economic well-being of the UK; the prevention of disorder and crime; the protection of health or morals; and the protection of the rights and freedoms of others (and in doing so also reflects the relevant public interest considerations as set out in Part 5A of the Nationality, Immigration and Asylum Act 2002). It also takes into account the need to safeguard and promote the welfare of children in the UK, in line with the Secretary of State's duty under section 55 of the Borders, Citizenship and Immigration Act 2009.

Definitions

GEN.1.2. For the purposes of this Appendix "partner" means-

(i) the applicant's spouse;

(ii) the applicant's civil partner;

(iii) the applicant's fiancé(e) or proposed civil partner; or

(iv) a person who has been living together with the applicant in a relationship akin to a marriage or civil partnership for at least two years prior to the date of application, unless a different meaning of partner applies elsewhere in this Appendix.

GEN.1.3. For the purposes of this Appendix

(a) “application for leave to remain” also includes an application for variation of leave to enter or remain by a person in the UK;

(b) references to a person being present and settled in the UK also include a person who is being admitted for settlement on the same occasion as the applicant; and

(c) references to a British Citizen in the UK also include a British Citizen who is coming to the UK with the applicant as their partner or parent.

GEN.1.4. In this Appendix “specified” means specified in Appendix FM-SE, unless otherwise stated.

GEN.1.5. If the Entry Clearance Officer, or Secretary of State, has reasonable cause to doubt the genuineness of any document submitted in support of an application, and having taken reasonable steps to verify the document, is unable to verify that it is genuine, the document will be discounted for the purposes of the application.

GEN.1.6. For the purposes of paragraph E-ECP.4.1.(a); E-LTRP.4.1.(a); E-LTRP.4.1A.(a); E-ECPT. 4.1(a); E-LTRPT.5.1.(a); and E-LTRPT.5.1A.(a) the applicant must be a national of Antigua and Barbuda; Australia; the Bahamas; Barbados; Belize; Canada; Dominica; Grenada; Guyana; Jamaica; New Zealand; St Kitts and Nevis; St Lucia; St Vincent and the Grenadines; Trinidad and Tobago; or the United States of America.

GEN.1.7. In this Appendix references to paragraphs are to paragraphs of this Appendix unless the context otherwise requires.

GEN.1.8. Paragraphs 277-280, 289AA, 295AA and 296 of Part 8 of these Rules shall apply to this Appendix.

GEN.1.9. In this Appendix:

(a) the requirement to make a valid application will not apply when the Article 8 claim is raised:

(i) as part of an asylum claim, or as part of a further submission in person after an asylum claim has been refused;

(ii) where a migrant is in immigration detention. A migrant in immigration detention or their representative must submit any application or claim raising Article 8 to a prison officer, a prisoner custody officer, a detainee custody officer or a member of Home Office staff at the migrant’s place of detention; or

(iii) in an appeal (subject to the consent of the Secretary of State where applicable); and

(b) where an application or claim raising Article 8 is made in any of the circumstances specified in paragraph GEN.1.9.(a), or is considered by the Secretary of State under paragraph A277C of these rules, the requirements of paragraphs R-LTRP.1.1.(c) and R-LTRPT.1.1.(c) are not met.

GEN.1.10. Where paragraph GEN.3.1.(2) or GEN.3.2.(3) applies, and the applicant is granted entry clearance or leave to enter or remain under, as appropriate, paragraph D-

ECP.1.2., D-LTRP.1.2., D-ECC.1.1., D-LTRC.1.1., D-ECPT.1.2. or D-LTRPT.1.2., that grant of entry clearance or leave to enter or remain will be subject to a condition of no recourse to public funds unless the decision-maker considers, with reference to paragraph GEN.1.11A., that the applicant should not be subject to such a condition.

GEN.1.11. Where entry clearance or leave to enter or remain is granted under this Appendix (and without prejudice to the specific provision that is made in this Appendix in respect of a no recourse to public funds condition), that leave may be subject to such conditions as the decision-maker considers appropriate in a particular case.

GEN.1.11A. Where entry clearance or leave to remain as a partner, child or parent is granted under paragraph D-ECP.1.2., D-LTRP.1.2., D-ECC.1.1., D-LTRC.1.1., D-ECPT.1.2. or D-LTRPT.1.2., it will normally be granted subject to a condition of no recourse to public funds, unless the applicant has provided the decision-maker with:

(a) satisfactory evidence that the applicant is destitute as defined in section 95 of the Immigration and Asylum Act 1999; or

(b) satisfactory evidence that there are particularly compelling reasons relating to the welfare of a child of a parent in receipt of a very low income.

GEN.1.12. In this Appendix, “decision-maker” refers, as the case may be, to the Secretary of State, an Immigration Officer or an Entry Clearance Officer.

GEN.1.13. For the purposes of paragraphs D-LTRP.1.1., D-LTRP.1.2., DILRP.1.2., D-LTRPT.1.1., D-LTRPT.1.2. and D-ILRPT.1.2. (excluding a grant of limited leave to remain as a fiancé(e) or proposed civil partner), where at the date of application the applicant has extant leave as a partner or parent (as applicable) granted under this Appendix, the remaining period of that extant leave up to a maximum of 28 days will be added to the period of limited leave to remain granted under that paragraph (which may therefore exceed 30 months).

GEN.1.14. Where a person aged 18 or over is granted entry clearance or limited leave to enter or remain under this Appendix, or where a person granted such entry clearance or limited leave to enter or remain will be aged 18 before that period of entry clearance or limited leave expires, the entry clearance or leave will, in addition to any other conditions which may apply, be granted subject to the conditions in Part 15 of these rules.

GEN.1.15. Where, pursuant to paragraph D-ILRP.1.2., D-ILRP.1.3., D-ILRPT.1.2. or D-ILRPT.1.3., a person who has made an application for indefinite leave to remain under this Appendix does not meet the requirements for indefinite leave to remain but falls to be granted limited leave to remain under those provisions or paragraphs 276ADE(1) to 276DH:

(a) The Secretary of State will treat that application for indefinite leave to remain as an application for limited leave to remain;

(b) The Secretary of State will notify the applicant in writing of any requirement to pay an immigration health charge under the Immigration (Health Charge) Order 2015; and

(c) If there is such a requirement and that requirement is not met, the application for limited leave to remain will be invalid and the Secretary of State will not refund any application fee paid in respect of the application for indefinite leave to remain.

Leave to enter

GEN.2.1. Subject to paragraph GEN.2.3., the requirements to be met by a person seeking leave to enter the UK under this route are that the person-

(a) must have a valid entry clearance for entry under this route; and

(b) must produce to the Immigration Officer on arrival a valid national passport or other document satisfactorily establishing their identity and nationality.

GEN.2.2. If a person does not meet the requirements of paragraph GEN.2.1. entry will be refused.

GEN.2.3.(1). Where an applicant for leave to enter the UK remains in the UK on immigration bail and the requirements of sub-paragraph (2) are met, paragraph GEN.1.10., D-LTRP.1.2., D-LTRC.1.1. or D-LTRPT.1.2. (as appropriate) will apply, as if paragraph D-LTRP.1.2., D-LTRC.1.1. or D-LTRPT.1.2. (where relevant) provided for the granting of leave to enter not leave to remain (and except that the references to leave to remain and limited leave to remain are to be read as leave to enter).

(2). The requirements of this sub-paragraph are met where:

(a) the applicant satisfies the requirements in paragraph R-LTRP.1.1.(a), (b) and (d), paragraph R-LTRC.1.1.(a), (b) and (d) or paragraph R-LTRPT.1.1.(a), (b) and (d), as if those were requirements for leave to enter not leave to remain (and except that the references to leave to remain and indefinite leave to remain are to be read as leave to enter); or

(b) a parent of the applicant has been granted leave to enter in accordance with this paragraph and the applicant satisfies the requirements in paragraph R-LTRC.1.1.(a), (b) and (d), as if those were requirements for leave to enter not leave to remain and as if paragraph R-LTRC.1.1.(d)(iii) referred to a parent of the applicant being or having been granted leave to enter in accordance with this paragraph (and except that the references to leave to remain are to be read as leave to enter).

Exceptional circumstances

GEN.3.1.(1) Where:

> (a) the financial requirement in paragraph E-ECP.3.1., E-LTRP.3.1. (in the context of an application for limited leave to remain as a partner), E-ECC.2.1. or E-LTRC.2.1. applies, and is not met from the specified sources referred to in the relevant paragraph; and
>
> (b) it is evident from the information provided by the applicant that there are exceptional circumstances which could render refusal of entry clearance or leave to remain a breach of Article 8 of the European Convention on Human Rights, because such refusal could result in unjustifiably harsh consequences for the applicant, their partner or a relevant child; then

the decision-maker must consider whether such financial requirement is met through taking into account the sources of income, financial support or funds set out in paragraph 21A(2) of Appendix FM-SE (subject to the considerations in sub-paragraphs (3) to (8) of that paragraph).

(2) Where the financial requirement in paragraph E-ECP.3.1., E-LTRP.3.1. (in the context of an application for limited leave to remain as a partner), E-ECC.2.1. or E-LTRC.2.1. is met following consideration under sub-paragraph (1) (and provided that the other relevant requirements of the Immigration Rules are also met), the applicant will be granted entry clearance or leave to remain under, as appropriate, paragraph D-ECP.1.2., D-LTRP.1.2., D-ECC.1.1. or D-LTRC.1.1. or paragraph 315 or 316B of the Immigration Rules.

GEN.3.2.(1) Subject to sub-paragraph (4), where an application for entry clearance or leave to enter or remain made under this Appendix, or an application for leave to remain which has otherwise been considered under this Appendix, does not otherwise meet the requirements of this Appendix or Part 9 of the Rules, the decision-maker must consider whether the circumstances in sub-paragraph (2) apply.

(2) Where sub-paragraph (1) above applies, the decision-maker must consider, on the basis of the information provided by the applicant, whether there are exceptional circumstances which would render refusal of entry clearance, or leave to enter or remain, a breach of Article 8 of the European Convention on Human Rights, because such refusal would result in unjustifiably harsh consequences for the applicant, their partner, a relevant child or another family member whose Article 8 rights it is evident from that information would be affected by a decision to refuse the application.

(3) Where the exceptional circumstances referred to in sub-paragraph (2) above apply, the applicant will be granted entry clearance or leave to enter or remain under, as appropriate, paragraph D-ECP.1.2., D-LTRP.1.2., D-ECC.1.1., D-LTRC.1.1., D-ECPT.1.2., D-LTRPT.1.2., D-ECDR.1.1. or D-ECDR.1.2.

(4) This paragraph does not apply in the context of applications made under section BPILR or DVILR.

GEN.3.3.(1) In considering an application for entry clearance or leave to enter or remain where paragraph GEN.3.1. or GEN.3.2. applies, the decision-maker must take into account, as a primary consideration, the best interests of any relevant child.

(2) In paragraphs GEN.3.1. and GEN.3.2., and this paragraph, “relevant child” means a person who:

(a) is under the age of 18 years at the date of the application; and

(b) it is evident from the information provided by the applicant would be affected by a decision to refuse the application.

Family life with a partner

Section EC-P: Entry clearance as a partner

EC-P.1.1. The requirements to be met for entry clearance as a partner are that-

(a) the applicant must be outside the UK;

(b) the applicant must have made a valid application for entry clearance as a partner;

(c) the applicant must not fall for refusal under any of the grounds in Section S-EC: Suitability–entry clearance; and

(d) the applicant must meet all of the requirements of Section E-ECP: Eligibility for entry clearance as a partner.

Section S-EC: Suitability-entry clearance

S-EC.1.1. The applicant will be refused entry clearance on grounds of suitability if any of paragraphs S-EC.1.2. to 1.9. apply.

S-EC.1.2. The Secretary of State has personally directed that the exclusion of the applicant from the UK is conducive to the public good.

S-EC.1.3. The applicant is currently the subject of a deportation order.

S-EC.1.4. The exclusion of the applicant from the UK is conducive to the public good because they have:

(a) been convicted of an offence for which they have been sentenced to a period of imprisonment of at least 4 years; or

(b) been convicted of an offence for which they have been sentenced to a period of imprisonment of at least 12 months but less than 4 years, unless a period of 10 years has passed since the end of the sentence; or

(c) been convicted of an offence for which they have been sentenced to a period of imprisonment of less than 12 months, unless a period of 5 years has passed since the end of the sentence.

S-EC.1.5. The exclusion of the applicant from the UK is conducive to the public good because, for example, the applicant's conduct (including convictions which do not fall within paragraph S-EC.1.4.), character, associations, or other reasons, make it undesirable to grant them entry clearance.

S-EC.1.6. The applicant has failed without reasonable excuse to comply with a requirement to-

(a) attend an interview;

(b) provide information;

(c) provide physical data; or

(d) undergo a medical examination or provide a medical report.

S-EC.1.7. It is undesirable to grant entry clearance to the applicant for medical reasons.

S-EC.1.8. The applicant left or was removed from the UK as a condition of a caution issued in accordance with section 22 of the Criminal Justice Act 2003 less than 5 years prior to the date on which the application is decided.

S-EC.1.9. The Secretary of State considers that the applicant's parent or parent's partner poses a risk to the applicant. That person may be considered to pose a risk to the applicant if, for example, they - –

(a) have a conviction as an adult, whether in the UK or overseas, for an offence against a child;

(b) are a registered sex offender and have failed to comply with any notification requirements; or

(c) are required to comply with a sexual risk order made under the Anti-Social Behaviour, Crime and Policing Act 2014 and have failed to do so.

S-EC.2.1. The applicant will normally be refused on grounds of suitability if any of paragraphs S-EC.2.2. to 2.5. apply.

S-EC.2.2. Whether or not to the applicant's knowledge-

(a) false information, representations or documents have been submitted in relation to the application (including false information submitted to any person to obtain a document used in support of the application); or

(b) there has been a failure to disclose material facts in relation to the application.

S-EC.2.3. DELETED.

S-EC.2.4. A maintenance and accommodation undertaking has been requested or required under paragraph 35 of these Rules or otherwise and has not been provided.

S-EC.2.5. The exclusion of the applicant from the UK is conducive to the public good because:

> (a) within the 12 months prior to the date on which the application is decided, the person has been convicted of or admitted an offence for which they received a non-custodial sentence or other out of court disposal that is recorded on their criminal record; or
>
> (b) in the view of the Secretary of State:
>
> > (i) the person's offending has caused serious harm; or
> >
> > (ii) the person is a persistent offender who shows a particular disregard for the law.

S-EC.3.1. The applicant may be refused on grounds of suitability if the applicant has failed to pay litigation costs awarded to the Home Office.

S-EC.3.2. The applicant may be refused on grounds of suitability if one or more relevant NHS bodies has notified the Secretary of State that the applicant has failed to pay charges in accordance with the relevant NHS regulations on charges to overseas visitors and the outstanding charges have a total value of at least £500.

Section E-ECP: Eligibility for entry clearance as a partner

E-ECP.1.1. To meet the eligibility requirements for entry clearance as a partner all of the requirements in paragraphs E-ECP.2.1. to 4.2. must be met.

Relationship requirements

E-ECP.2.1. The applicant's partner must be-

(a) a British Citizen in the UK, subject to paragraph GEN.1.3.(c); or

(b) present and settled in the UK, subject to paragraph GEN.1.3.(b); or

(c) in the UK with refugee leave or with humanitarian protection.

E-ECP.2.2. The applicant must be aged 18 or over at the date of application.

E-ECP.2.3. The partner must be aged 18 or over at the date of application.

E-ECP.2.4. The applicant and their partner must not be within the prohibited degree of relationship.

E-ECP.2.5. The applicant and their partner must have met in person.

E-ECP.2.6. The relationship between the applicant and their partner must be genuine and subsisting.

E-ECP.2.7. If the applicant and partner are married or in a civil partnership it must be a valid marriage or civil partnership, as specified.

E-ECP.2.8. If the applicant is a fiancé(e) or proposed civil partner they must be seeking entry to the UK to enable their marriage or civil partnership to take place.

E-ECP.2.9. (i) Any previous relationship of the applicant or their partner must have broken down permanently, unless it is a relationship which falls within paragraph 278(i) of these Rules; and

(ii) If the applicant is a fiancé(e) or proposed civil partner, neither the applicant nor their partner can be married to, or in a civil partnership with, another person at the date of application.

E-ECP.2.10. The applicant and partner must intend to live together permanently in the UK.

Financial requirements

E-ECP.3.1. The applicant must provide specified evidence, from the sources listed in paragraph E-ECP.3.2., of-

(a) a specified gross annual income of at least-

(i) £18,600;

(ii) an additional £3,800 for the first child; and

(iii) an additional £2,400 for each additional child; alone or in combination with

(b) specified savings of-

(i) £16,000; and

(ii) additional savings of an amount equivalent to 2.5 times the amount which is the difference between the gross annual income from the sources listed in paragraph E-ECP.3.2.(a)-(d) and the total amount required under paragraph E-ECP.3.1.(a); or

(c) the requirements in paragraph E-ECP.3.3. being met. In this paragraph "child" means a dependent child of the applicant or the applicant's partner who is-

(a) under the age of 18 years, or who was under the age of 18 years when they were first granted entry under this route;

(b) applying for entry clearance as a dependant of the applicant or the applicant's partner, or is in the UK with leave as their dependant;

(c) not a British Citizen or settled in the UK; and

(d) not an EEA national with a right to be admitted to or reside in the UK under the Immigration (EEA) Regulations 2006.

E-ECP.3.2. When determining whether the financial requirement in paragraph E-ECP. 3.1. is met only the following sources will be taken into account-

(a) income of the partner from specified employment or self-employment, which, in respect of a partner returning to the UK with the applicant, can include specified employment or self-employment overseas and in the UK;

(b) specified pension income of the applicant and partner;

(c) any specified maternity allowance or bereavement benefit received by the partner in the UK or any specified payment relating to service in HM Forces received by the applicant or partner;

(d) other specified income of the applicant and partner; and

(e) specified savings of the applicant and partner.

E-ECP.3.3. The requirements to be met under this paragraph are-

(a) the applicant's partner must be receiving one or more of the following -

(i) disability living allowance;

(ii) severe disablement allowance;

(iii) industrial injury disablement benefit;

(iv) attendance allowance;

(v) carer's allowance;

(vi) personal independence payment;

(vii) Armed Forces Independence Payment or Guaranteed Income Payment under the Armed Forces Compensation Scheme;

(viii) Constant Attendance Allowance, Mobility Supplement or War Disablement Pension under the War Pensions Scheme; or

(ix) Police Injury Pension; and

(b) the applicant must provide evidence that their partner is able to maintain and accommodate themselves, the applicant and any dependants adequately in the UK without recourse to public funds.

E-ECP.3.4. The applicant must provide evidence that there will be adequate accommodation, without recourse to public funds, for the family, including other family members who are not included in the application but who live in the same household, which the family own or occupy exclusively: accommodation will not be regarded as adequate if-

(a) it is, or will be, overcrowded; or

(b) it contravenes public health regulations.

English language requirement

E-ECP.4.1. The applicant must provide specified evidence that they-

(a) are a national of a majority English speaking country listed in paragraph GEN.1.6.;

(b) have passed an English language test in speaking and listening at a minimum of level A1 of the Common European Framework of Reference for Languages with a provider approved by the Secretary of State;

(c) have an academic qualification which is either a Bachelor's or Master's degree or PhD awarded by an educational establishment in the UK; or, if awarded by an educational establishment outside the UK, is deemed by UK NARIC to meet or exceed the recognised standard of a Bachelor's or Master's degree or PhD in the UK, and UK NARIC has confirmed that the degree was taught or researched in English to level A1 of the Common European Framework of Reference for Languages or above; or

(d) are exempt from the English language requirement under paragraph E-ECP.4.2.

E-ECP.4.2. The applicant is exempt from the English language requirement if at the date of application-

(a) the applicant is aged 65 or over;

(b) the applicant has a disability (physical or mental condition) which prevents the applicant from meeting the requirement; or

(c) there are exceptional circumstances which prevent the applicant from being able to meet the requirement prior to entry to the UK.

Section D-ECP: Decision on application for entry clearance as a partner

D-ECP.1.1. Except where paragraph GEN.3.1.(2) or GEN.3.2.(3) of this Appendix applies, an applicant who meets the requirements for entry clearance as a partner (other than as a fiancé(e) or proposed civil partner) will be granted entry clearance for an initial period not exceeding 33 months, and subject to a condition of no recourse to public funds, and they will be eligible to apply for settlement after a continuous period of at least 60 months in the UK with leave to enter granted on the basis of such entry clearance or with limited leave to remain as a partner granted under paragraph D-LTRP.1.1. (excluding in all cases any period of leave to enter or limited leave to remain as a fiancé(e) or proposed civil partner); or, where the applicant is a fiancé(e) or proposed civil partner, the applicant will be granted entry clearance for a period not exceeding 6 months, and subject to a prohibition on employment and a condition of no recourse to public funds.

D-ECP.1.2. Where paragraph GEN.3.1.(2) or GEN.3.2.(3) of this Appendix applies, an applicant who meets the requirements for entry clearance as a partner (other than as a fiancé(e) or proposed civil partner) will be granted entry clearance for an initial period not exceeding 33 months, and subject to a condition of no recourse to public funds unless the decision-maker considers, with reference to paragraph GEN.1.11A., that the applicant should not be subject to such a condition, and they will be eligible to apply for settlement after a continuous period of at least 120 months in the UK with leave to enter granted on the basis of such entry clearance or of entry clearance granted under paragraph D-ECP.1.1. or with limited leave to remain as a partner granted under paragraph D-LTRP.1.1. or D-LTRP.1.2. (excluding in all cases any period of leave to enter or limited leave to remain as a fiancé(e) or proposed civil partner); or, where the applicant is a fiancé(e) or proposed civil partner, the applicant will be granted entry clearance for a period not exceeding 6 months, and subject to a prohibition on employment and a condition of no recourse to public funds.

D-ECP.1.3. If the applicant does not meet the requirements for entry clearance as a partner, the application will be refused.

Section R-LTRP: Requirements for limited leave to remain as a partner

R-LTRP.1.1. The requirements to be met for limited leave to remain as a partner are-

(a) the applicant and their partner must be in the UK;

(b) the applicant must have made a valid application for limited or indefinite leave to remain as a partner; and either

(c)

(i) the applicant must not fall for refusal under Section S-LTR: Suitability leave to remain; and

(ii) the applicant meets all of the requirements of Section E-LTRP: Eligibility for leave to remain as a partner; or

(d)

(i) the applicant must not fall for refusal under Section S-LTR: Suitability leave to remain; and

(ii) the applicant meets the requirements of paragraphs E-LTRP.1.2-1.12. and E-LTRP.2.1-2.2.; and

(iii) paragraph EX.1. applies.

Section S-LTR: Suitability-leave to remain

S-LTR.1.1. The applicant will be refused limited leave to remain on grounds of suitability if any of paragraphs S-LTR.1.2. to 1.8. apply.

S-LTR.1.2. The applicant is currently the subject of a deportation order.

S-LTR.1.3. The presence of the applicant in the UK is not conducive to the public good because they have been convicted of an offence for which they have been sentenced to imprisonment for at least 4 years.

S-LTR.1.4. The presence of the applicant in the UK is not conducive to the public good because they have been convicted of an offence for which they have been sentenced to imprisonment for less than 4 years but at least 12 months.

S-LTR.1.5. The presence of the applicant in the UK is not conducive to the public good because, in the view of the Secretary of State, their offending has caused serious harm or they are a persistent offender who shows a particular disregard for the law.

S-LTR.1.6. The presence of the applicant in the UK is not conducive to the public good because their conduct (including convictions which do not fall within paragraphs S-LTR.1.3. to 1.5.), character, associations, or other reasons, make it undesirable to allow them to remain in the UK.

S-LTR.1.7. The applicant has failed without reasonable excuse to comply with a requirement to-

(a) attend an interview;

(b) provide information;

(c) provide physical data; or

(d) undergo a medical examination or provide a medical report.

S-LTR.1.8. The presence of the applicant in the UK is not conducive to the public good because the Secretary of State:

(a) has made a decision under Article 1F of the Refugee Convention to exclude the person from the Refugee Convention or under paragraph 339D of these Rules to exclude them from humanitarian protection; or

(b) has previously made a decision that they are a person to whom Article 33(2) of the Refugee Convention applies because there are reasonable grounds for regarding them as a danger to the security of the UK; or

(c) considers that they are a person to whom sub-paragraph (a) or (b) would apply except that (i) the person has not made a protection claim, or (ii) the person made a protection claim which has already been finally determined without reference to Article 1F of the Refugee Convention or paragraph 339D of these Rules; or

(d) has previously made a decision that they are a person to whom Article 33(2) of the Refugee Convention applies because, having been convicted by a final judgment of a particularly serious crime, they constitute a danger to the community of the UK.

S-LTR.2.1. The applicant will normally be refused on grounds of suitability if any of paragraphs S-LTR.2.2. to 2.5. apply.

S-LTR.2.2. Whether or not to the applicant's knowledge –

(a) false information, representations or documents have been submitted in relation to the application (including false information submitted to any person to obtain a document used in support of the application); or

(b) there has been a failure to disclose material facts in relation to the application.

S-LTR.2.3. DELETED.

S-LTR.2.4. A maintenance and accommodation undertaking has been requested under paragraph 35 of these Rules and has not been provided.

S-LTR.2.5. The Secretary of State has given notice to the applicant and their partner under section 50(7)(b) of the Immigration Act 2014 that one or both of them have not complied with the investigation of their proposed marriage or civil partnership.

S-LTR.3.1. When considering whether the presence of the applicant in the UK is not conducive to the public good any legal or practical reasons why the applicant cannot presently be removed from the UK must be ignored.

S-LTR.4.1. The applicant may be refused on grounds of suitability if any of paragraphs S-LTR.4.2. to S-LTR.4.5. apply.

S-LTR.4.2. The applicant has made false representations or failed to disclose any material fact in a previous application for entry clearance, leave to enter, leave to remain or a variation of leave, or in a previous human rights claim; or did so in order to obtain from the Secretary of State or a third party a document required to support such an application or claim (whether or not the application or claim was successful).

S-LTR.4.3. The applicant has previously made false representations or failed to disclose material facts for the purpose of obtaining a document from the Secretary of State that indicates that he or she has a right to reside in the United Kingdom.

S-LTR.4.4. The applicant has failed to pay litigation costs awarded to the Home Office.

S-LTR.4.5. One or more relevant NHS bodies has notified the Secretary of State that the applicant has failed to pay charges in accordance with the relevant NHS regulations on charges to overseas visitors and the outstanding charges have a total value of at least £500.

Section E-LTRP: Eligibility for limited leave to remain as a partner

E-LTRP.1.1. To qualify for limited leave to remain as a partner all of the requirements of paragraphs E-LTRP.1.2. to 4.2. must be met.

Relationship requirements

E-LTRP.1.2. The applicant's partner must be-

(a) a British Citizen in the UK;

(b) present and settled in the UK; or

(c) in the UK with refugee leave or as a person with humanitarian protection.

E-LTRP.1.3. The applicant must be aged 18 or over at the date of application.

E-LTRP.1.4. The partner must be aged 18 or over at the date of application.

E-LTRP.1.5. The applicant and their partner must not be within the prohibited degree of relationship.

E-LTRP.1.6. The applicant and their partner must have met in person.

E-LTRP.1.7. The relationship between the applicant and their partner must be genuine and subsisting.

E-LTRP.1.8. If the applicant and partner are married or in a civil partnership it must be a valid marriage or civil partnership, as specified.

E-LTRP.1.9. Any previous relationship of the applicant or their partner must have broken down permanently, unless it is a relationship which falls within paragraph 278(i) of these Rules.

E-LTRP.1.10. The applicant and their partner must intend to live together permanently in the UK and, in any application for further leave to remain as a partner (except where the applicant is in the UK as a fiancé(e) or proposed civil partner) and in any application for indefinite leave to remain as a partner, the applicant must provide evidence that, since entry clearance as a partner was granted under paragraph D-ECP1.1. or since the last grant of limited leave to remain as a partner, the applicant and their partner have lived together in the UK or there is good reason, consistent with a continuing intention to live together permanently in the UK, for any period in which they have not done so.

E-LTRP.1.11. If the applicant is in the UK with leave as a fiancé(e) or proposed civil partner and the marriage or civil partnership did not take place during that period of leave, there must be good reason why and evidence that it will take place within the next 6 months.

E-LTRP.1.12. The applicant's partner cannot be the applicant's fiancé(e) or proposed civil partner, unless the applicant was granted entry clearance as that person's fiancé(e) or proposed civil partner.

Immigration status requirements

E-LTRP.2.1. The applicant must not be in the UK-

(a) as a visitor; or

(b) with valid leave granted for a period of 6 months or less, unless that leave is as a fiancé(e) or proposed civil partner, or was granted pending the outcome of family court or divorce proceedings

E-LTRP.2.2. The applicant must not be in the UK –

(a) on immigration bail, unless:

(i) the Secretary of State is satisfied that the applicant arrived in the UK more than 6 months prior to the date of application; and

(ii) paragraph EX.1. applies; or

(b) in breach of immigration laws (except that, where paragraph 39E of these Rules applies, any current period of overstaying will be disregarded), unless paragraph EX.1. applies.

Financial requirements

E-LTRP.3.1. The applicant must provide specified evidence, from the sources listed in paragraph E-LTRP.3.2., of-

(a) a specified gross annual income of at least-

(i) £18,600;

(ii) an additional £3,800 for the first child; and

(iii) an additional £2,400 for each additional child; alone or in combination with

(b) specified savings of-

(i) £16,000; and

(ii) additional savings of an amount equivalent to 2.5 times the amount which is the difference between the gross annual income from the sources listed in paragraph E-LTRP.3.2.(a)-(f) and the total amount required under paragraph E-LTRP.3.1.(a); or

(c) the requirements in paragraph E-LTRP.3.3.being met, unless paragraph EX.1. applies.

In this paragraph “child” means a dependent child of the applicant or the applicant’s partner who is-

(a) under the age of 18 years, or who was under the age of 18 years when they were first granted entry under this route;

(b) applying for entry clearance or leave to remain as a dependant of the applicant or the applicant’s partner, or is in the UK with leave as their dependant;

(c) not a British Citizen or settled in the UK; and

(d) not an EEA national with a right to be admitted to or reside in the UK under the Immigration (EEA) Regulations 2006.

E-LTRP.3.2. When determining whether the financial requirement in paragraph E-LTRP. 3.1. is met only the following sources may be taken into account-

(a) income of the partner from specified employment or self-employment;

(b) income of the applicant from specified employment or self-employment unless they are working illegally;

(c) specified pension income of the applicant and partner;

(d) any specified maternity allowance or bereavement benefit received by the applicant and partner in the UK or any specified payment relating to service in HM Forces received by the applicant or partner;

(e) other specified income of the applicant and partner;

(f) income from the sources at (b), (d) or (e) of a dependent child of the applicant or of the applicant’s partner under paragraph E-LTRP.3.1. who is aged 18 years or over; and

(g) specified savings of the applicant, partner and a dependent child of the applicant or of the applicant’s partner under paragraph E-LTRP.3.1. who is aged 18 years or over.

E-LTRP.3.3. The requirements to meet this paragraph are-

(a) the applicant’s partner must be receiving one or more of the following -

(i) disability living allowance;

(ii) severe disablement allowance;

(iii) industrial injury disablement benefit;

(iv) attendance allowance;

(v) carer’s allowance;

(vi) personal independence payment;

(vii) Armed Forces Independence Payment or Guaranteed Income Payment under the Armed Forces Compensation Scheme;

(viii) Constant Attendance Allowance, Mobility Supplement or War Disablement Pension under the War Pensions Scheme; or

(ix) Police Injury Pension; and

(b) the applicant must provide evidence that their partner is able to maintain and accommodate themselves, the applicant and any dependants adequately in the UK without recourse to public funds.

E-LTRP.3.4. The applicant must provide evidence that there will be adequate accommodation, without recourse to public funds, for the family, including other family members who are not included in the application but who live in the same household, which the family own or occupy exclusively, unless paragraph EX.1. applies: accommodation will not be regarded as adequate if-

(a) it is, or will be, overcrowded; or

(b) it contravenes public health regulations.

English language requirement

E-LTRP.4.1. If the applicant has not met the requirement in a previous application for entry clearance or leave to remain as a partner or parent, the applicant must provide specified evidence that they-

(a) are a national of a majority English speaking country listed in paragraph GEN.1.6.;

(b) have passed an English language test in speaking and listening at a minimum of level A1 of the Common European Framework of Reference for Languages with a provider approved by the Secretary of State;

(c) have an academic qualification which is either a Bachelor's or Master's degree or PhD awarded by an educational establishment in the UK; or, if awarded by an educational establishment outside the UK, is deemed by UK NARIC to meet or exceed the recognised standard of a Bachelor's or Master's degree or PhD in the UK, and UK NARIC has confirmed that the degree was taught or researched in English to level A1 of the Common European Framework of Reference for Languages or above; or

(d) are exempt from the English language requirement under paragraph E-LTRP.4.2.; unless paragraph EX.1. applies.

E-LTRP.4.1A. Where the applicant:

(i) in a previous application for entry clearance or leave to remain as a partner or parent, met the English language requirement in paragraph E-ECP.4.1.(b), E-LTRP.4.1.(b), E-ECPT.4.1.(b) or E-LTRPT.5.1.(b) on the basis that they had passed an English language test in speaking and listening at level A1 of the Common European Framework of Reference for Languages;

(ii) was granted entry clearance or leave to remain as a partner or parent; and

(iii) now seeks further leave to remain as a partner after 30 months in the UK with leave as a partner; then, the applicant must provide specified evidence that they:

(a) are a national of a majority English speaking country listed in paragraph GEN.1.6.;

(b) have passed an English language test in speaking and listening at a minimum of level A2 of the Common European Framework of Reference for Languages with a provider approved by the Secretary of State;

(c) have an academic qualification which is either a Bachelor‟s or Master‟s degree or PhD awarded by an educational establishment in the UK; or, if awarded by an educational establishment outside the UK, is deemed by UK NARIC to meet or exceed the recognised standard of a Bachelor‟s or Master‟s degree or PhD in the UK, and UK NARIC has confirmed that the degree was taught or researched in English to level A2 of the Common European Framework of Reference for Languages or above; or

(d) are exempt from the English language requirement under paragraph E-LTRP.4.2.; unless paragraph EX.1. applies.

E-LTRP.4.2. The applicant is exempt from the English language requirement in paragraph E-LTRP.4.1. or E-LTRP.4.1A. if at the date of application-

(a) the applicant is aged 65 or over;

(b) the applicant has a disability (physical or mental condition) which prevents the applicant from meeting the requirement; or

(c) there are exceptional circumstances which prevent the applicant from being able to meet the requirement.

Section D-LTRP: Decision on application for limited leave to remain as a partner

D-LTRP.1.1. If the applicant meets the requirements in paragraph R-LTRP.1.1.(a) to (c) for limited leave to remain as a partner the applicant will be granted limited leave to remain for a period not exceeding 30 months, and subject to a condition of no recourse to public funds, and they will be eligible to apply for settlement after a continuous period of at least 60 months with such leave or in the UK with leave to enter granted on the basis of entry clearance granted under paragraph D-ECP.1.1. (excluding in all cases any period of leave to enter or limited leave to remain as a fiancé(e) or proposed civil partner); or, if paragraph E-LTRP.1.11. applies, the applicant will be granted limited leave for a period not exceeding 6 months and subject to a condition of no recourse to public funds and a prohibition on employment.

D-LTRP.1.2. If the applicant meets the requirements in paragraph R-LTRP.1.1.(a), (b) and (d) for limited leave to remain as a partner, or paragraph GEN.3.1.(2) or GEN.3.2.(3) applies to an applicant for leave to remain as a partner, the applicant will be granted leave to remain for a period not exceeding 30 months and subject to a condition of no recourse to public funds unless the decision-maker considers, with reference to paragraph GEN.1.11A., that

the applicant should not be subject to such a condition, and they will be eligible to apply for settlement after a continuous period of at least 120 months in the UK with such leave, with limited leave to remain as a partner granted under paragraph D-LTRP.1.1., or in the UK with leave to enter granted on the basis of entry clearance as a partner granted under paragraph D-ECP1.1. or D-ECP.1.2. (excluding in all cases any period of leave to enter or limited leave to remain as a fiancé(e) or proposed civil partner); or, if paragraph E-LTRP.1.11. applies, the applicant will be granted limited leave for a period not exceeding 6 months and subject to a condition of no recourse to public funds and a prohibition on employment.

D-LTRP.1.3. If the applicant does not meet the requirements for limited leave to remain as a partner the application will be refused.

Section R-ILRP: Requirements for indefinite leave to remain (settlement) as a partner

R-ILRP.1.1. The requirements to be met for indefinite leave to remain as a partner are that-

(a) the applicant and their partner must be in the UK;

(b) the applicant must have made a valid application for indefinite leave to remain as a partner;

(c) the applicant must not fall for refusal under any of the grounds in Section S-ILR: Suitability for indefinite leave to remain; and

(d) deleted

(e) the applicant must meet all of the requirements of Section E-ILRP: Eligibility for indefinite leave to remain as a partner.

Section S-ILR: Suitability for indefinite leave to remain

S-ILR.1.1. The applicant will be refused indefinite leave to remain on grounds of suitability if any of paragraphs S-ILR.1.2. to 1.10. apply.

S-ILR.1.2. The applicant is currently the subject of a deportation order.

S-ILR.1.3. The presence of the applicant in the UK is not conducive to the public good because they have been convicted of an offence for which they have been sentenced to imprisonment for at least 4 years.

S-ILR.1.4. The presence of the applicant in the UK is not conducive to the public good because they have been convicted of an offence for which they have been sentenced to imprisonment for less than 4 years but at least 12 months, unless a period of 15 years has passed since the end of the sentence.

S-ILR.1.5. The presence of the applicant in the UK is not conducive to the public good because they have been convicted of an offence for which they have been sentenced to imprisonment for less than 12 months, unless a period of 7 years has passed since the end of the sentence.

S-ILR.1.6. The applicant has, within the 24 months prior to the date on which the application is decided, been convicted of or admitted an offence for which they received a non-custodial sentence or other out of court disposal that is recorded on their criminal record.

S-ILR.1.7. The presence of the applicant in the UK is not conducive to the public good because, in the view of the Secretary of State, their offending has caused serious harm or they are a persistent offender who shows a particular disregard for the law.

S-ILR.1.8. The presence of the applicant in the UK is not conducive to the public good because their conduct (including convictions which do not fall within paragraphs S-ILR.1.3. to 1.6.), character, associations, or other reasons, make it undesirable to allow them to remain in the UK.

S-ILR.1.9. The applicant has failed without reasonable excuse to comply with a requirement to-

(a) attend an interview;

(b) provide information;

(c) provide physical data; or

(d) undergo a medical examination or provide a medical report.

S-ILR.1.10. The presence of the applicant in the UK is not conducive to the public good because the Secretary of State:

(a) has made a decision under Article 1F of the Refugee Convention to exclude the person from the Refugee Convention or under paragraph 339D of these Rules to exclude them from humanitarian protection; or

(b) has previously made a decision that they are a person to whom Article 33(2) of the Refugee Convention applies because there are reasonable grounds for regarding them as a danger to the security of the UK; or

(c) considers that they are a person to whom sub-paragraph (a) or (b) would apply except that (i) the person has not made a protection claim, or (ii) the person made a protection claim which has already been finally determined without reference to Article 1F of the Refugee Convention or paragraph 339D of these Rules; or

(d) has previously made a decision that they are a person to whom Article 33(2) of the Refugee Convention applies because, having been convicted by a final judgment of a particularly serious crime, they constitute a danger to the community of the UK.

S-ILR.2.1. The applicant will normally be refused on grounds of suitability if any of paragraphs S-ILR.2.2. to 2.4. apply.

S-ILR.2.2. Whether or not to the applicant’s knowledge –

(a) false information, representations or documents have been submitted in relation to the application (including false information submitted to any person to obtain a document used in support of the application); or

(b) there has been a failure to disclose material facts in relation to the application.

S-ILR.2.3. DELETED.

S-ILR.2.4. A maintenance and accommodation undertaking has been requested under paragraph 35 of these Rules and has not been provided.

S-ILR.3.1. When considering whether the presence of the applicant in the UK is not conducive to the public good, any legal or practical reasons why the applicant cannot presently be removed from the UK must be ignored.

S-ILR.4.1. The applicant may be refused on grounds of suitability if any of paragraphs S-ILR.4.2. to S-ILR.4.5. apply.

S-ILR.4.2. The applicant has made false representations or failed to disclose any material fact in a previous application for entry clearance, leave to enter, leave to remain or a variation of leave, or in a previous human rights claim; or did so in order to obtain from the Secretary of State or a third party a document required to support such an application or claim (whether or not the application or claim was successful).

S-ILR.4.3. The applicant has previously made false representations or failed to disclose material facts for the purpose of obtaining a document from the Secretary of State that indicates that he or she has a right to reside in the United Kingdom.

S-ILR.4.4. The applicant has failed to pay litigation costs awarded to the Home Office.

S-ILR.4.5. One or more relevant NHS bodies has notified the Secretary of State that the applicant has failed to pay charges in accordance with the relevant NHS regulations on charges to overseas visitors and the outstanding charges have a total value of at least £500.

Section E-ILRP: Eligibility for indefinite leave to remain as a partner

E-ILRP.1.1. To meet the eligibility requirements for indefinite leave to remain as a partner all of the requirements of paragraphs E-ILRP.1.2. to 1.6. must be met.

E-ILRP.1.2. The applicant must be in the UK with valid leave to remain as a partner under this Appendix (except that, where paragraph 39E of these Rules applies, any current period of overstaying will be disregarded).

E-ILRP.1.3. (1) Subject to sub-paragraph (2), the applicant must, at the date of application, have completed a continuous period of either:

(a) at least 60 months in the UK with:

(i) leave to enter granted on the basis of entry clearance as a partner granted under paragraph D-ECP.1.1.; or

(ii) limited leave to remain as a partner granted under paragraph D-LTRP.1.1.; or

(iii) a combination of (i) and (ii);

1. or

(b) at least 120 months in the UK with:

(i) leave to enter granted on the basis of entry clearance as a partner granted under paragraph D-ECP.1.1. or D-ECP.1.2.; or

(ii) limited leave to remain as a partner granted under paragraph D-LTRP.1.1. or D-LTRP.1.2.; or

(iii) a combination of (i) and (ii).

(1A) In respect of an application falling within sub-paragraph (1)(a) above, the applicant must meet all of the requirements of Section E-LTRP: Eligibility for leave to remain as a partner (except that paragraph E-LTRP.1.2. cannot be met on the basis set out in sub-paragraph (c) of that paragraph, and in applying paragraph E-LTRP.3.1.(b)(ii) delete the words "2.5 times").

(1B) In respect of an application falling within sub-paragraph (1)(b) above:

(a) the applicant must meet all of the requirements of paragraphs E-LTRP.1.2.-1.12. (except that paragraph E-LTRP.1.2. cannot be met on the basis set out in sub-paragraph (c) of that paragraph) and E-LTRP.2.1. - 2.2.; and

(b) paragraph EX.1. must apply.

(2) In calculating periods of leave for the purposes of sub-paragraph (1) above, any period of leave to enter or limited leave to remain as a fiancé(e) or proposed civil partner will be excluded.

E-ILRP.1.4. In calculating the periods under paragraph E-ILRP.1.3. only the periods when the applicant's partner is the same person as the applicant's partner for the previous period of limited leave shall be taken into account.

E-ILRP.1.5. In calculating the periods under paragraph E-ILRP.1.3. the words "in the UK" in that paragraph shall not apply to any period(s) to which the evidence in paragraph 26A of Appendix FM-SE applies.

E-ILRP.1.5A. In calculating the periods under paragraph E-ILRP.1.3., any current period of overstaying will be disregarded where paragraph 39E of these Rules applies. Any previous period of overstaying between periods of leave will also be disregarded where: the further application was made before 24 November 2016 and within 28 days of the expiry of leave; or the further application was made on or after 24 November 2016 and paragraph 39E of these Rules applied.

E-ILRP.1.6. The applicant must have demonstrated sufficient knowledge of the English language and sufficient knowledge about life in the United Kingdom in accordance with the requirements of Appendix KoLL of these Rules.

Section D-ILRP: Decision on application for indefinite leave to remain as a partner

D-ILRP.1.1. If the applicant meets all of the requirements for indefinite leave to remain as a partner the applicant will be granted indefinite leave to remain.

D-ILRP.1.2. If the applicant does not meet the requirements for indefinite leave to remain as a partner only for one or both of the following reasons-

(a) paragraph S-ILR.1.5. or S-ILR.1.6. applies;

(b) the applicant has not demonstrated sufficient knowledge of the English language or about life in the United Kingdom in accordance with Appendix KoLL,

subject to compliance with any requirement notified under paragraph GEN.1.15.(b), the applicant will be granted further limited leave to remain as a partner for a period not exceeding 30 months, and subject to a condition of no recourse to public funds.

D-ILRP.1.3. If the applicant does not meet all the eligibility requirements for indefinite leave to remain as a partner, and does not qualify for further limited leave to remain as a partner under paragraph DILRP. 1.2., the application will be refused, unless the applicant meets the requirements in paragraph R-LTRP.1.1.(a), (b) and (d) for limited leave to remain as a partner. Where they do, and subject to compliance with any requirement notified under paragraph GEN.1.15.(b), the applicant will be granted further limited leave to remain as a partner for a period not exceeding 30 months under paragraph D-LTRP.1.2. and subject to a condition of no recourse to public funds unless the Secretary of State considers that the person should not be subject to such a condition.

Section EX: Exceptions to certain eligibility requirements for leave to remain as a partner or parent

EX.1. This paragraph applies if

(a)

(i) the applicant has a genuine and subsisting parental relationship with a child who-

(aa) is under the age of 18 years, or was under the age of 18 years when the applicant was first granted leave on the basis that this paragraph applied;

(bb) is in the UK;

(cc) is a British Citizen or has lived in the UK continuously for at least the 7 years immediately preceding the date of application ;and

(ii) taking into account their best interests as a primary consideration, it would not be reasonable to expect the child to leave the UK; or

(b) the applicant has a genuine and subsisting relationship with a partner who is in the UK and is a British Citizen, settled in the UK or in the UK with refugee leave or humanitarian protection, and there are insurmountable obstacles to family life with that partner continuing outside the UK.

EX.2. For the purposes of paragraph EX.1.(b) “insurmountable obstacles” means the very significant difficulties which would be faced by the applicant or their partner in continuing their family life together outside the UK and which could not be overcome or would entail very serious hardship for the applicant or their partner.

Bereaved partner

Section BPILR: Indefinite leave to remain (settlement) as a bereaved partner

BPILR.1.1. The requirements to be met for indefinite leave to remain in the UK as a bereaved partner are that-

(a) the applicant must be in the UK;

(b) the applicant must have made a valid application for indefinite leave to remain as a bereaved partner;

(c) the applicant must not fall for refusal under any of the grounds in Section S-ILR: Suitability-indefinite leave to remain; and

(d) the applicant must meet all of the requirements of Section E-BPILR:

Eligibility for indefinite leave to remain as a bereaved partner.

Section E-BPILR: Eligibility for indefinite leave to remain as a bereaved partner

E-BPILR.1.1. To meet the eligibility requirements for indefinite leave to remain as a bereaved partner all of the requirements of paragraphs E-BPILR1.2. to 1.4. must be met.

E-BPILR.1.2. The applicant's last grant of limited leave must have been as-

(a) a partner (other than a fiancé(e) or proposed civil partner) of a British Citizen or a person settled in the UK; or

(b) a bereaved partner.

E-BPILR.1.3. The person who was the applicant's partner at the time of the last grant of limited leave as a partner must have died.

E-BPILR.1.4. At the time of the partner's death the relationship between the applicant and the partner must have been genuine and subsisting and each of the parties must have intended to live permanently with the other in the UK.

Section D-BPILR: Decision on application for indefinite leave to remain as a bereaved partner

D-BPILR.1.1. If the applicant meets all of the requirements for indefinite leave to remain as a bereaved partner the applicant will be granted indefinite leave to remain.

D-BPILR.1.2. If the applicant does not meet the requirements for indefinite leave to remain as a bereaved partner only because paragraph S-ILR.1.5. or S-ILR.1.6. applies, the applicant will be granted further limited leave to remain for a period not exceeding 30 months, and subject to a condition of no recourse to public funds.

D-BPILR.1.3. If the applicant does not meet the requirements for indefinite leave to remain as a bereaved partner, or limited leave to remain as a bereaved partner under paragraph D-BPILR.1.2., the application will be refused.

Victim of domestic abuse

Section DVILR: Indefinite leave to remain (settlement) as a victim of domestic abuse

DVILR.1.1. The requirements to be met for indefinite leave to remain in the UK as a victim of domestic abuse are that-

(a) the applicant must be in the UK;

(b) the applicant must have made a valid application for indefinite leave to remain as a victim of domestic abuse;

(c) the applicant must not fall for refusal under any of the grounds in Section S-ILR: Suitability-indefinite leave to remain; and

(d) the applicant must meet all of the requirements of Section E-DVILR: Eligibility for indefinite leave to remain as a victim of domestic abuse.

Section E-DVILR: Eligibility for indefinite leave to remain as a victim of domestic abuse

E-DVILR.1.1. To meet the eligibility requirements for indefinite leave to remain as a victim of domestic abuse all of the requirements of paragraphs E-DVILR.1.2. and 1.3. must be met.

E-DVILR.1.2. The applicant's first grant of limited leave under this Appendix must have been as a partner (other than a fiancé(e) or proposed civil partner) of a British Citizen, a person settled in the UK, or a person with refugee leave, under paragraph D-ECP.1.1., D-LTRP.1.1. or D-LTRP.1.2. of this Appendix or as a partner of a refugee granted under paragraph 352A, and any subsequent grant of limited leave must have been:

(a) granted as a partner (other than a fiancé(e) or proposed civil partner) of a British Citizen, a person settled in the UK, or a person with refugee leave under paragraph D-ECP.1.1., D-LTRP.1.1. or D-LTRP.1.2. of this Appendix; or

(b) granted to enable access to public funds pending an application under DVILR and the preceding grant of leave was granted as a partner (other than a fiancé(e) or proposed civil partner) of a British Citizen, a person settled in the UK, or a person with refugee leave under paragraph D-ECP.1.1., DLTRP.1.1. or D-LTRP.1.2. of this Appendix; or

(c) granted under paragraph D-DVILR.1.2.

E-DVILR.1.3. The applicant must provide evidence that during the last period of limited leave as a partner of a British Citizen, a person settled in the UK, or a person with refugee leave under paragraph D-ECP.1.1., DLTRP.1.1 or D-LTRP.1.2 of this Appendix or during their only period of leave under 352A, the applicant's relationship with their partner broke down permanently as a result of domestic abuse.

Section D-DVILR: Decision on application for indefinite leave to remain as a victim of domestic abuse

D-DVILR.1.1. If the applicant meets all of the requirements for indefinite leave to remain as a victim of domestic abuse the applicant will be granted indefinite leave to remain.

D-DVILR.1.2. If the applicant does not meet the requirements for indefinite leave to remain as a victim of domestic abuse only because paragraph S-ILR.1.5. or S-ILR.1.6. applies, the applicant will be granted further limited leave to remain for a period not exceeding 30 months.

D-DVILR.1.3. If the applicant does not meet the requirements for indefinite leave to remain as a victim of domestic abuse, or further limited leave to remain under paragraph D-DVILR.1.2. the application will be refused.

Family life as a child of a person with limited leave as a partner or parent

This route is for a child whose parent is applying under this Appendix for entry clearance or leave, or who has limited leave, as a partner or parent. For further provision on a child seeking to enter or remain in the UK for the purpose of their family life see Part 8 of these Rules.

Section EC-C: Entry clearance as a child

EC-C.1.1. The requirements to be met for entry clearance as a child are that-

(a) the applicant must be outside the UK;

(b) the applicant must have made a valid application for entry clearance as a child;

(c) the applicant must not fall for refusal under any of the grounds in Section S-EC: Suitability for entry clearance; and

(d) the applicant must meet all of the requirements of Section E-ECC: Eligibility for entry clearance as a child.

Section E-ECC: Eligibility for entry clearance as a child

E-ECC.1.1. To meet the eligibility requirements for entry clearance as a child all of the requirements of paragraphs E-ECC.1.2. to 2.4. must be met.

Relationship requirements

E-ECC.1.2. The applicant must be under the age of 18 at the date of application.

E-ECC.1.3. The applicant must not be married or in a civil partnership.

E-ECC.1.4. The applicant must not have formed an independent family unit.

E-ECC.1.5. The applicant must not be leading an independent life.

E-ECC.1.6. One of the applicant's parents must be in the UK with limited leave to enter or remain, or be being granted, or have been granted, entry clearance, as a partner or a parent under this Appendix (referred to in this section as the "applicant's parent"), and

(a) the applicant's parent's partner under Appendix FM is also a parent of the applicant;or

(b) the applicant's parent has had and continues to have sole responsibility for the child's upbringing; or

(c) there are serious and compelling family or other considerations which make exclusion of the child undesirable and suitable arrangements have been made for the child's care.

Financial requirement

E-ECC.2.1. Where a parent of the applicant has, or is applying or has applied for, entry clearance or limited leave to enter or remain as a partner under this Appendix, the applicant must provide specified evidence, from the sources listed in paragraph E-ECC.2.2., of-

(a) a specified gross annual income of at least-

(i) £18,600;

(ii) an additional £3,800 for the first child; and

(iii) an additional £2,400 for each additional child; alone or in combination with

(b) specified savings of

(i) £16,000; and

(ii) additional savings of an amount equivalent to 2.5 times the amount which is the difference between the gross annual income from the sources listed in paragraph E-ECC.2.2.(a)-(f) and the total amount required under paragraph E-ECC.2.1.(a); or

(c) the requirements in paragraph E-ECC.2.3. being met.

In this paragraph "child" means the applicant and any other dependent child of the applicant's parent or the applicant's parent's partner who is-

(a) under the age of 18 years, or who was under the age of 18 years when they were first granted entry under this route;

(b) applying for entry clearance as a dependant of the applicant's parent or of the applicant's parent's partner, or is in the UK with leave as their dependant;

(c) not a British Citizen or settled in the UK; and

(d) not an EEA national with a right to be admitted to or reside in the UK under the Immigration (EEA) Regulations 2006.

E-ECC.2.2. When determining whether the financial requirement in paragraph E-ECC.2.1. is met only the following sources may be taken into account-

(a) income of the applicant's parent's partner from specified employment or self-employment, which, in respect of an applicant's parent's partner returning to the UK with the applicant, can include specified employment or self-employment overseas and in the UK;

(b) income of the applicant's parent from specified employment or self employment if they are in the UK unless they are working illegally;

(c) specified pension income of the applicant's parent and that parent's partner;

(d) any specified maternity allowance or bereavement benefit received by the applicant's parent and that parent's partner in the UK or any specified payment relating to service in HM Forces received by the applicant's parent and that parent's partner;

(e) other specified income of the applicant's parent and that parent's partner;

(f) income from the sources at (b), (d) or (e) of a dependent child of the applicant's parent under paragraph E-ECC.2.1. who is aged 18 years or over; and

(g) specified savings of the applicant's parent, that parent's partner and a dependent child of the applicant's parent under paragraph E-ECC.2.1. who is aged 18 years or over.

E-ECC.2.3. The requirements to be met under this paragraph are-

(a) the applicant's parent's partner must be receiving one or more of the following-

(i) disability living allowance;

(ii) severe disablement allowance;

(iii) industrial injury disablement benefit;

(iv) attendance allowance;

(v) carer's allowance;

(vi) personal independence payment;

(vii) Armed Forces Independence Payment or Guaranteed Income Payment under the Armed Forces Compensation Scheme;

(viii) Constant Attendance Allowance, Mobility Supplement or War Disablement Pension under the War Pensions Scheme; or

(ix) Police Injury Pension; and

(b) the applicant must provide evidence that their parent's partner is able to maintain and accommodate themselves, the applicant's parent, the applicant and any dependants adequately in the UK without recourse to public funds.

E-ECC.2.3A. Where a parent of the applicant has, or is applying or has applied for, entry clearance or limited leave to enter or remain as a parent under this Appendix, the applicant must provide evidence that that parent is able to maintain and accommodate themselves, the applicant and any other dependants adequately in the UK without recourse to public funds.

E-ECC.2.4. The applicant must provide evidence that there will be adequate accommodation, without recourse to public funds, for the family, including other family members who are not included in the application but who live in the same household, which the family own or occupy exclusively: accommodation will not be regarded as adequate if-

(a) it is, or will be, overcrowded; or

(b) it contravenes public health regulations.

Section D-ECC: Decision on application for entry clearance as a child

D-ECC.1.1. If the applicant meets the requirements for entry clearance as a child they will be granted entry clearance of a duration which will expire at the same time as the leave granted to the applicant's parent, and will be subject to the same conditions in respect of recourse to public funds as that parent.

D-ECC.1.2. If the applicant does not meet the requirements for entry clearance as a child the application will be refused.

Section R-LTRC: Requirements for leave to remain as a child

R-LTRC.1.1. The requirements to be met for leave to remain as a child are that-

(a) the applicant must be in the UK;

(b) the applicant must have made a valid application for leave to remain as a child; and either

(c)

(i) the applicant must not fall for refusal under any of the grounds in Section S- LTR: Suitability-leave to remain; and

(ii) the applicant meets all of the requirements of Section E-LTRC: Eligibility for leave to remain as a child; and

(iii) a parent of the applicant has been or is at the same time being granted leave to remain under paragraph D-LTRP.1.1. or D-LTRPT.1.1. or indefinite leave to remain under this Appendix (except as an adult dependent relative); or

(d)

(i) the applicant must not fall for refusal under any of the grounds in Section S- LTR: Suitability-leave to remain; and

(ii) the applicant meets the requirements of paragraphs E-LTRC.1.2.-1.6.; and

(iii) a parent of the applicant has been or is at the same time being granted leave to remain under paragraph D-LTRP.1.2., D-ILRP.1.2., D-LTRPT.1.2. or D-ILRPT.1.2. or indefinite leave to remain under this Appendix (except as an adult dependent relative).

Section E-LTRC: Eligibility for leave to remain as a child

E-LTRC.1.1. To qualify for limited leave to remain as a child all of the requirements of paragraphs E-LTRC.1.2. to 2.4. must be met (except where paragraph R-LTRC.1.1.(d)(ii) applies).

Relationship requirements

E-LTRC.1.2. The applicant must be under the age of 18 at the date of application or when first granted leave as a child under this route.

E-LTRC.1.3. The applicant must not be married or in a civil partnership.

E-LTRC.1.4. The applicant must not have formed an independent family unit.

E-LTRC.1.5. The applicant must not be leading an independent life.

E-LTRC.1.6. One of the applicant's parents (referred to in this section as the "applicant's parent") must be in the UK and have leave to enter or remain or indefinite leave to remain, or is at the same time being granted leave to remain or indefinite leave to remain, under this Appendix (except as an adult dependent relative), and

(a) the applicant's parent's partner under Appendix FM is also a parent of the applicant; or

(b) the applicant's parent has had and continues to have sole responsibility for the child's upbringing or the applicant normally lives with this parent and not their other parent; or

(c) there are serious and compelling family or other considerations which make exclusion of the child undesirable and suitable arrangements have been made for the child's care.

Financial requirements

E-LTRC.2.1. Where a parent of the applicant has, or is applying or has applied for, limited leave to remain as a partner under this Appendix, the applicant must provide specified evidence, from the sources listed in paragraph E-LTRC.2.2., of -

(a) a specified gross annual income of at least-

(i) £18,600;

(ii) an additional £3,800 for the first child; and

(iii) an additional £2,400 for each additional child; alone or in combination with

(b) specified savings of-

(i) £16,000; and

(ii) additional savings of an amount equivalent to 2.5 times (or if the parent is applying for indefinite leave to remain 1 times) the amount which is the difference between the gross annual income from the sources listed in paragraph E-LTRC.2.2.(a)-(f) and the total amount required under paragraph E-LTRC.2.1.(a); or

(c) the requirements in paragraph E-LTRC.2.3. being met.

In this paragraph “child” means the applicant and any other dependent child of the applicant’s parent or the applicant’s parent’s partner who is-

(a) under the age of 18 years, or who was under the age of 18 years when they were first granted entry under this route;

(b) applying for entry clearance as a dependant of the applicant’s parent or of the applicant’s parent’s partner, or is in the UK with leave as their dependant;

(c) not a British Citizen or settled in the UK; and

(d) not an EEA national with a right to be admitted to or reside in the UK under the Immigration (EEA) Regulations 2006.

E-LTRC.2.2. When determining whether the financial requirement in paragraph E-LTRC.2.1. is met only the following sources may be taken into account-

(a) income of the applicant’s parent’s partner from specified employment or self-employment;

(b) income of the applicant’s parent from specified employment or self employment;

(c) specified pension income of the applicant’s parent and that parent’s partner;

(d) any specified maternity allowance or bereavement benefit received by the applicant’s parent and that parent’s partner in the UK or any specified payment relating to service in HM Forces received by the applicant’s parent and that parent’s partner;

(e) other specified income of the applicant’s parent and that parent’s partner;

(f) income from the sources at (b), (d) or (e) of a dependent child of the applicant’s parent under paragraph E-LTRC.2.1. who is aged 18 years or over; and

(g) specified savings of the applicant’s parent, that parent’s partner and a dependent child of the applicant’s parent under paragraph E-ECC.2.1. who is aged 18 years or over.

E-LTRC.2.3. The requirements to be met under this paragraph are-

(a) the applicant’s parent’s partner must be receiving one or more of the following -

(i) disability living allowance;

(ii) severe disablement allowance;

(iii) industrial injury disablement benefit;

(iv) attendance allowance;

(v) carer’s allowance;

(vi) personal independence payment;

(vii) Armed Forces Independence Payment or Guaranteed Income Payment under the Armed Forces Compensation Scheme;

(viii) Constant Attendance Allowance, Mobility Supplement or War Disablement Pension under the War Pensions Scheme; or

(ix) Police Injury Pension; and

(b) the applicant must provide evidence that their parent's partner is able to maintain and accommodate themselves, the applicant's parent, the applicant and any dependants adequately in the UK without recourse to public funds.

E-LTRC.2.3A. Where a parent of the applicant has, or is applying or has applied for, limited leave to remain as a parent under this Appendix, the applicant must provide evidence that that parent is able to maintain and accommodate themselves, the applicant and any other dependants adequately in the UK without recourse to public funds.

E-LTRC.2.4. The applicant must provide evidence that there will be adequate accommodation in the UK, without recourse to public funds, for the family, including other family members who are not included in the application but who live in the same household, which the family own or occupy exclusively: accommodation will not be regarded as adequate if-

(a) it is, or will be, overcrowded; or

(b) it contravenes public health regulations.

Section D-LTRC: Decision on application for leave to remain as a child

D-LTRC.1.1. If the applicant meets the requirements for leave to remain as a child the applicant will be granted leave to remain of a duration which will expire at the same time as the leave granted to the applicant's parent, and will be subject to the same conditions in respect of recourse to public funds as that parent. To qualify for indefinite leave to remain as a child of a person with indefinite leave to remain as a partner or parent, the applicant must meet the requirements of paragraph 298 of these rules.

D-LTRC.1.2. If the applicant does not meet the requirements for leave to remain as a child the application will be refused.

Family life as a parent of a child in the UK

Section EC-PT: Entry clearance as a parent of a child in the UK

EC-PT.1.1. The requirements to be met for entry clearance as a parent are that-

(a) the applicant must be outside the UK;

(b) the applicant must have made a valid application for entry clearance as a parent;

(c) the applicant must not fall for refusal under any of the grounds in Section S-EC: Suitability–entry clearance; and

(d) the applicant must meet all of the requirements of Section E-ECPT: Eligibility for entry clearance as a parent.

Section E-ECPT: Eligibility for entry clearance as a parent

E-ECPT.1.1. To meet the eligibility requirements for entry clearance as a parent all of the requirements in paragraphs E-ECPT.2.1. to 4.2. must be met.

Relationship requirements

E-ECPT.2.1. The applicant must be aged 18 years or over.

E-ECPT.2.2. The child of the applicant must be-

(a) under the age of 18 years at the date of application;

(b) living in the UK; and

(c) a British Citizen or settled in the UK.

E-ECPT.2.3. Either -

(a) the applicant must have sole parental responsibility for the child; or

(b) the parent or carer with whom the child normally lives must be-

(i) a British Citizen in the UK or settled in the UK;

(ii) not the partner of the applicant; and

(iii) the applicant must not be eligible to apply for entry clearance as a partner under this Appendix.

E -ECPT.2.4.

(a) The applicant must provide evidence that they have either-

(i) sole parental responsibility for the child; or

(ii) direct access (in person) to the child, as agreed with the parent or carer with whom the child normally lives or as ordered by a court in the UK; and

(b) The applicant must provide evidence that they are taking, and intend to continue to take, an active role in the child's upbringing.

Financial requirements

E-ECPT.3.1. The applicant must provide evidence that they will be able to adequately maintain and accommodate themselves and any dependants in the UK without recourse to public funds

E-ECPT.3.2. The applicant must provide evidence that there will be adequate accommodation in the UK, without recourse to public funds, for the family, including other

family members who are not included in the application but who live in the same household, which the family own or occupy exclusively: accommodation will not be regarded as adequate if-

(a) it is, or will be, overcrowded; or

(b) it contravenes public health regulations.

English language requirement

E-ECPT.4.1. The applicant must provide specified evidence that they-

(a) are a national of a majority English speaking country listed in paragraph GEN.1.6.;

(b) have passed an English language test in speaking and listening at a minimum of level A1 of the Common European Framework of Reference for Languages with a provider approved by the Secretary of State;

(c) have an academic qualification which is either a Bachelor's or Master's degree or PhD awarded by an educational establishment in the UK; or, if awarded by an educational establishment outside the UK, is deemed by UK NARIC to meet or exceed the recognised standard of a Bachelor's or Master's degree or PhD in the UK, and UK NARIC has confirmed that the degree was taught or researched in English to level A1 of the Common European Framework of Reference for Languages or above; or

(d) are exempt from the English language requirement under paragraph E-ECPT.4.2.

E-ECPT.4.2. The applicant is exempt from the English language requirement if at the date of application-

(a) the applicant is aged 65 or over;

(b) the applicant has a disability (physical or mental condition) which prevents the applicant from meeting the requirement; or

(c) there are exceptional circumstances which prevent the applicant from being able to meet the requirement prior to entry to the UK.

Section D-ECPT: Decision on application for entry clearance as a parent

D-ECPT.1.1. If the applicant meets the requirements for entry clearance as a parent (except where paragraph GEN.3.2.(3) applies), the applicant will be granted entry clearance for an initial period not exceeding 33 months, and subject to a condition of no recourse to public funds, and they will be eligible to apply for settlement after a continuous period of at least 60 months in the UK with leave to enter granted on the basis of such entry clearance or with limited leave to remain as a parent granted under paragraph D-LTRPT.1.1.

D-ECPT.1.2. If paragraph GEN.3.2.(3) applies to an applicant for entry clearance as a parent, the applicant will be granted entry clearance for an initial period not exceeding 33 months, and subject to a condition of no recourse to public funds unless the decision-maker considers, with reference to paragraph GEN.1.11A., that the person should not be subject to such a condition, and they will be eligible to apply for settlement after a continuous period of

at least 120 months in the UK with leave to enter granted on the basis of such entry clearance or of entry clearance granted under paragraph D-ECPT.1.1. or with limited leave to remain as a parent granted under paragraph D-LTRPT.1.1. or D-LTRPT.1.2.

D-ECPT.1.3. If the applicant does not meet the requirements for entry clearance as a parent, the application will be refused.

Section R-LTRPT: Requirements for limited leave to remain as a parent

R-LTRPT.1.1. The requirements to be met for limited leave to remain as a parent are-

(a) the applicant and the child must be in the UK;

(b) the applicant must have made a valid application for limited or indefinite leave to remain as a parent or partner; and either

(c)

(i) the applicant must not fall for refusal under Section S-LTR: Suitability leave to remain; and

(ii) the applicant meets all of the requirements of Section ELTRPT: Eligibility for leave to remain as a parent, or

(d)

(i) the applicant must not fall for refusal under S-LTR: Suitability leave to remain; and

(ii) the applicant meets the requirements of paragraphs E-LTRPT.2.2-2.4. and E-LTRPT.3.1-3.2.; and

(iii) paragraph EX.1. applies.

Section E-LTRPT: Eligibility for limited leave to remain as a parent

E-LTRPT.1.1. To qualify for limited leave to remain as a parent all of the requirements of paragraphs E-LTRPT.2.2. to 5.2. must be met.

Relationship requirements

E-LTRPT.2.2. The child of the applicant must be-

(a) under the age of 18 years at the date of application, or where the child has turned 18 years of age since the applicant was first granted entry clearance or leave to remain as a parent under this Appendix, must not have formed an independent family unit or be leading an independent life;

(b) living in the UK; and

(c) a British Citizen or settled in the UK; or

(d) has lived in the UK continuously for at least the 7 years immediately preceding the date of application and paragraph EX.1. applies.

E-LTRPT.2.3. Either-

(a) the applicant must have sole parental responsibility for the child or the child normally lives with the applicant and not their other parent (who is a British Citizen or settled in the UK), and the applicant must not be eligible to apply for leave to remain as a partner under this Appendix; or

(b) the parent or carer with whom the child normally lives must be-

(i) a British Citizen in the UK or settled in the UK;

(ii) not the partner of the applicant (which here includes a person who has been in a relationship with the applicant for less than two years prior to the date of application); and

(iii) the applicant must not be eligible to apply for leave to remain as a partner under this Appendix.

E-LTRPT.2.4.

(a) The applicant must provide evidence that they have either-

(i) sole parental responsibility for the child, or that the child normally lives with them; or

(ii) direct access (in person) to the child, as agreed with the parent or carer with whom the child normally lives or as ordered by a court in the UK; and

(b) The applicant must provide evidence that they are taking, and intend to continue to take, an active role in the child's upbringing.

Immigration status requirement

E-LTRPT.3.1. The applicant must not be in the UK-

(a) as a visitor; or

(b) with valid leave granted for a period of 6 months or less, unless that leave was granted pending the outcome of family court or divorce proceedings;

E-LTRPT.3.2. The applicant must not be in the UK –

(a) on immigration bail, unless:

(i) the Secretary of State is satisfied that the applicant arrived in the UK more than 6 months prior to the date of application; and

(ii) paragraph EX.1. applies; or

(b) in breach of immigration laws (except that, where paragraph 39E of these Rules applies, any current period of overstaying will be disregarded), unless paragraph EX.1. applies.

Financial requirements

E-LTRPT.4.1. The applicant must provide evidence that they will be able to adequately maintain and accommodate themselves and any dependants in the UK without recourse to public funds, unless paragraph EX.1. applies.

E-LTRPT.4.2. The applicant must provide evidence that there will be adequate accommodation in the UK, without recourse to public funds, for the family, including other family members who are not included in the application but who live in the same household, which the family own or occupy exclusively, unless paragraph EX.1. applies: accommodation will not be regarded as adequate if-

(a) it is, or will be, overcrowded; or

(b) it contravenes public health regulations.

English language requirement

E-LTRPT.5.1. If the applicant has not met the requirement in a previous application for entry clearance or leave to remain as a parent or partner, the applicant must provide specified evidence that they-

(a) are a national of a majority English speaking country listed in paragraph GEN.1.6.;

(b) have passed an English language test in speaking and listening at a minimum of level A1 of the Common European Framework of Reference for Languages with a provider approved by the Secretary of State;

(c) have an academic qualification which is either a Bachelor's or Master's degree or PhD awarded by an educational establishment in the UK; or, if awarded by an educational establishment outside the UK, is deemed by UK NARIC to meet or exceed the recognised standard of a Bachelor's or Master's degree or PhD in the UK, and UK NARIC has confirmed that the degree was taught or researched in English to level A1 of the Common European Framework of Reference for Languages or above; or

(d) are exempt from the English language requirement under paragraph E-LTRPT.5.2.; unless paragraph EX.1. applies.

E-LTRPT.5.1A. Where the applicant:

(i) in a previous application for entry clearance or leave to remain as a parent or partner, met the English language requirement in paragraph E-ECP.4.1.(b), E-LTRP.4.1.(b), E-ECPT.4.1.(b) or E-LTRPT.5.1.(b) on the basis that they had passed an English language test in speaking and listening at level A1 of the Common European Framework of Reference for Languages; and

(ii) was granted entry clearance or leave to remain as a parent or partner; and

(iii) now seeks further leave to remain as a parent after 30 months in the UK with leave as a parent; then, the applicant must provide specified evidence that they:

(a) are a national of a majority English speaking country listed in paragraph GEN.1.6.;

(b) have passed an English language test in speaking and listening at a minimum of level A2 of the Common European Framework of Reference for Languages with a provider approved by the Secretary of State;

(c) have an academic qualification which is either a Bachelor's or Master's degree or PhD awarded by an educational establishment in the UK; or, if awarded by an educational establishment outside the UK, is deemed by UK NARIC to be equivalent to the standard of a Bachelor's or Master's degree or PhD in the UK, and UK NARIC has confirmed that the degree was taught or researched in English to level A2 of the Common European Framework of Reference for Languages or above; or

(d) are exempt from the English language requirement under paragraph E-LTRPT.5.2.

E-LTRPT.5.2. The applicant is exempt from the English language requirement in paragraph E-LTRPT.5.1. or E-LTRPT.5.1A. if at the date of application-

(a) the applicant is aged 65 or over;

(b) the applicant has a disability (physical or mental condition) which prevents the applicant from meeting the requirement; or

(c) there are exceptional circumstances which prevent the applicant from being able to meet the requirement.

Section D-LTRPT: Decision on application for limited leave to remain as a parent

D-LTRPT.1.1. If the applicant meets the requirements in paragraph R-LTRPT.1.1.(a) to (c) for limited leave to remain as a parent the applicant will be granted limited leave to remain for a period not exceeding 30 months, and subject to a condition of no recourse to public funds, and they will be eligible to apply for settlement after a continuous period of at least 60 months with such leave or in the UK with leave to enter granted on the basis of entry clearance as a parent granted under paragraph D-ECPT.1.1.

D-LTRPT.1.2. If the applicant meets the requirements in paragraph R-LTRPT.1.1.(a), (b) and (d) for limited leave to remain as a parent, or paragraph GEN.3.2.(3) applies to an applicant for leave to remain as a parent, the applicant will be granted leave to remain for a period not exceeding 30 months and subject to a condition of no recourse to public funds unless the decision-maker considers, with reference to paragraph GEN.1.11A., that the applicant should not be subject to such a condition, and they will be eligible to apply for settlement after a continuous period of at least 120 months in the UK with such leave, with limited leave to remain as a parent granted under paragraph D-LTRPT.1.1., or in the UK with leave to enter granted on the basis of entry clearance as a parent granted under paragraph D-ECPT.1.1. or D-ECPT.1.2.

D-LTRPT.1.3. If the applicant does not meet the requirements for limited leave to remain as a parent the application will be refused.

Section R-ILRPT: Requirements for indefinite leave to remain (settlement) as a parent

R-ILRPT.1.1. The requirements to be met for indefinite leave to remain as a parent are that-

(a) the applicant must be in the UK;

(b) the applicant must have made a valid application for indefinite leave to remain as a parent;

(c) the applicant must not fall for refusal under any of the grounds in Section S-ILR: Suitability-indefinite leave to remain; and

(d) deleted

(e) the applicant must meet all of the requirements of Section E-ILRPT: Eligibility for indefinite leave to remain as a parent.

Section E-ILRPT: Eligibility for indefinite leave to remain as a parent

E-ILRPT.1.1. To meet the eligibility requirements for indefinite leave to remain as a parent all of the requirements of paragraphs E-ILRPT.1.2. to 1.5. must be met.

E-ILRPT.1.2. The applicant must be in the UK with valid leave to remain as a parent under this Appendix (except that, where paragraph 39E of these Rules applies, any current period of overstaying will be disregarded).

E-ILRPT.1.3. (1) The applicant must, at the date of application, have completed a continuous period of either:

(a) at least 60 months in the UK with:

(i) leave to enter granted on the basis of entry clearance as a parent granted under paragraph D-ECPT.1.1.; or

(ii) limited leave to remain as a parent granted under paragraph D-LTRPT.1.1.; or

(iii) a combination of (i) and (ii);

or

(b) at least 120 months in the UK with:

(i) leave to enter granted on the basis of entry clearance as a parent granted under paragraph D-ECPT.1.1. or D-ECPT.1.2.;

or

(ii) limited leave to remain as a parent granted under paragraph D-LTRPT.1.1. or D-LTRPT.1.2.; or

(iii) a combination of (i) and (ii).

(1A) In respect of an application falling within sub-paragraph (1)(a) above, the applicant must meet all of the requirements of Section E-LTRPT: Eligibility for leave to remain as a parent.

(1B) In respect of an application falling within sub-paragraph (1)(b) above:

(a) the applicant must meet all of the requirements of paragraphs E-LTRPT.2.2.- 2.4. and E-LTRPT.3.1.- 3.2.; and

(b) paragraph EX.1. must apply.

E-ILRPT.1.4. DELETED.

E-ILRPT.1.5. The applicant must have demonstrated sufficient knowledge of the English language and sufficient knowledge about life in the United Kingdom in accordance with the requirements of Appendix KoLL of these Rules.

E-ILRPT.1.5A. In calculating the periods under paragraph E-ILRPT.1.3., any current period of overstaying will be disregarded where paragraph 39E of these Rules applies. Any previous period of overstaying between periods of leave will also be disregarded where: the further application was made before 24 November 2016 and within 28 days of the expiry of leave; or the further application was made on or after 24 November 2016 and paragraph 39E of these Rules applied.

Section D-ILRPT: Decision on application for indefinite leave to remain as a parent

D-ILRPT.1.1. If the applicant meets all of the requirements for indefinite leave to remain as a parent the applicant will be granted indefinite leave to remain.

D-ILRPT.1.2. If the applicant does not meet the requirements for indefinite leave to remain as a parent only for one or both of the following reasons-

(a) paragraph S-ILR.1.5. or S-ILR.1.6. applies; or

(b) the applicant has not demonstrated sufficient knowledge of the English language or about life in the United Kingdom in accordance with Appendix KoLL,

subject to compliance with any requirement notified under paragraph GEN.1.15.(b), the applicant will be granted further limited leave to remain as a parent for a period not exceeding 30 months, and subject to a condition of no recourse to public funds.

D-ILRPT.1.3. If the applicant does not meet all the eligibility requirements for indefinite leave to remain as a parent, and does not qualify for further limited leave to remain under paragraph D-ILRPT.1.2., the application will be refused, unless the applicant meets the requirements in paragraph R-LTRPT.1.1.(a), (b) and (d) for limited leave to remain as a parent. Where they do, and subject to compliance with any requirement notified under paragraph GEN.1.15.(b), the applicant will be granted further limited leave to remain as a parent for a period not exceeding 30 months under paragraph D-LTRPT.1.2. and subject to a condition of no recourse to public funds unless the Secretary of State considers that the person should not be subject to such a condition.

Adult dependent relative

Section EC-DR: Entry clearance as an adult dependent relative

EC-DR.1.1. The requirements to be met for entry clearance as an adult dependent relative are that-

(a) the applicant must be outside the UK;

(b) the applicant must have made a valid application for entry clearance as an adult dependent relative;

(c) the applicant must not fall for refusal under any of the grounds in Section S-EC: Suitability for entry clearance; and

(d) the applicant must meet all of the requirements of Section E-ECDR: Eligibility for entry clearance as an adult dependent relative.

Section E-ECDR: Eligibility for entry clearance as an adult dependent relative

E-ECDR.1.1. To meet the eligibility requirements for entry clearance as an adult dependent relative all of the requirements in paragraphs E-ECDR.2.1. to 3.2. must be met.

Relationship requirements

E-ECDR.2.1. The applicant must be the-

(a) parent aged 18 years or over;

(b) grandparent;

(c) brother or sister aged 18 years or over; or

(d) son or daughter aged 18 years or over of a person ("the sponsor") who is in the UK.

E-ECDR.2.2. If the applicant is the sponsor's parent or grandparent they must not be in a subsisting relationship with a partner unless that partner is also the sponsor's parent or grandparent and is applying for entry clearance at the same time as the applicant.

E-ECDR.2.3. The sponsor must at the date of application be-

(a) aged 18 years or over; and

(b)

(i) a British Citizen in the UK; or

(ii) present and settled in the UK; or

(iii) in the UK with refugee leave or humanitarian protection.

E-ECDR.2.4. The applicant or, if the applicant and their partner are the sponsor's parents or grandparents, the applicant's partner, must as a result of age, illness or disability require long-term personal care to perform everyday tasks.

E-ECDR.2.5. The applicant or, if the applicant and their partner are the sponsor's parents or grandparents, the applicant's partner, must be unable, even with the practical and financial help of the sponsor, to obtain the required level of care in the country where they are living, because-

(a) it is not available and there is no person in that country who can reasonably provide it; or

(b) it is not affordable.

Financial requirements

E-ECDR.3.1. The applicant must provide evidence that they can be adequately maintained, accommodated and cared for in the UK by the sponsor without recourse to public funds.

E-ECDR.3.2. If the applicant's sponsor is a British Citizen or settled in the UK, the applicant must provide an undertaking signed by the sponsor confirming that the applicant will have no recourse to public funds, and that the sponsor will be responsible for their maintenance, accommodation and care, for a period of 5 years from the date the applicant enters the UK if they are granted indefinite leave to enter.

Section D-ECDR: Decision on application for entry clearance as an adult dependent relative

D-ECDR.1.1. If the applicant meets the requirements for entry clearance as an adult dependent relative of a British Citizen or person settled in the UK they will be granted indefinite leave to enter.

D-ECDR.1.2. If the applicant meets the requirements for entry clearance as an adult dependent relative and the sponsor has limited leave the applicant will be granted limited leave of a duration which will expire at the same time as the sponsor's limited leave, and subject to a condition of no recourse to public funds. If the sponsor applies for further limited leave, the applicant may apply for further limited leave of the same duration, if the requirements in EC-DR.1.1. (c) and (d) continue to be met, and subject to no recourse to public funds.

D-ECDR.1.3. If the applicant does not meet the requirements for entry clearance as an adult dependent relative the application will be refused.

Section R-ILRDR: Requirements for indefinite leave to remain as an adult dependent relative

R-ILRDR.1.1. The requirements to be met for indefinite leave to remain as an adult dependent relative are that-

(a) the applicant is in the UK;

(b) the applicant must have made a valid application for indefinite leave to remain as an adult dependent relative;

(c) the applicant must not fall for refusal under any of the grounds in Section S-ILR: Suitability-indefinite leave to remain; and

(d) the applicant must meet all of the requirements of Section E-ILRDR: Eligibility for indefinite leave to remain as an adult dependent relative.

Section E-ILRDR: Eligibility for indefinite leave to remain as an adult dependent relative

E-ILRDR.1.1. To qualify for indefinite leave to remain as an adult dependent relative all of the requirements of paragraphs E-ILRDR.1.2. to 1.5. must be met.

E-ILRDR.1.2. The applicant must be in the UK with valid leave to remain as an adult dependent relative (except that, where paragraph 39E of these Rules applies, any current period of overstaying will be disregarded).

E-ILRDR.1.3. The applicant's sponsor must at the date of application be

(a) present and settled in the UK; or

(b) in the UK with refugee leave or as a person with humanitarian protection and have made an application for indefinite leave to remain.

E-ILRDR.1.4. The applicant must provide evidence that they can be adequately maintained, accommodated and cared for in the UK by the sponsor without recourse to public funds.

E-ILRDR.1.5. The applicant must provide an undertaking signed by the sponsor confirming that the applicant will have no recourse to public funds, and that the sponsor will be responsible for their maintenance, accommodation and care, for a period ending 5 years from the date the applicant entered the UK with limited leave as an adult dependent relative.

Section D-ILRDR: Decision on application for indefinite leave to remain as an adult dependent relative

D-ILRDR.1.1. If the applicant meets the requirements for indefinite leave to remain as an adult dependent relative and the applicant's sponsor is settled in the UK, the applicant will be granted indefinite leave to remain as an adult dependent relative.

D-ILRDR.1.2. If the applicant does not meet the requirements for indefinite leave to remain as an adult dependent relative because paragraph S-ILR.1.5. or S-ILR.1.6. applies, the applicant will be granted further limited leave to remain as an adult dependent relative for a period not exceeding 30 months, and subject to a condition of no recourse to public funds.

D-ILRDR.1.3. If the applicant's sponsor has made an application for indefinite leave to remain and that application is refused, the applicant's application for indefinite leave to remain will be refused. If the sponsor is granted limited leave, the applicant will be granted further limited leave as an adult dependent relative of a duration which will expire at the same time as the sponsor's further limited leave, and subject to a condition of no recourse to public funds.

D-ILRDR.1.4. Where an applicant does not meet the requirements for indefinite leave to remain, or further limited leave to remain under paragraphs D-ILRDR.1.2. or 1.3., the application will be refused.

Deportation and removal

Where the Secretary of State or an immigration officer is considering deportation or removal of a person who claims that their deportation or removal from the UK would be a breach of

the right to respect for private and family life under Article 8 of the Human Rights Convention that person may be required to make an application under this Appendix or paragraph 276ADE(1), but if they are not required to make an application Part 13 of these Rules will apply.

Appendix 3: Redraft of Part 9 (Grounds for refusal)

4 General Grounds for the refusal, cancellation or curtailment of leave

4.1 Application

4.1.1 This Part applies in all applications covered by these Rules, subject to any modifications set out in Parts dealing with particular categories of applicant.

4.2 Grounds of refusal applicable to entry clearance and all forms of leave or variation of leave

4.2.1 An application for entry clearance, leave to enter, leave to remain or variation of leave to enter or remain is to be refused if any of the following grounds apply:

(a) the application is made for a purpose not covered by the Rules;[486]

(b) the applicant is currently the subject of a deportation order[#] or a decision to make a deportation order;[487]

(c) in an application, or in order to obtain from the Secretary of State or a third party documents required in support of an application:

(i) false representations[#] have been made or false documents or information have been supplied (whether or not relevant to the application and whether or not to the applicant's knowledge); or

(ii) relevant facts have not been disclosed.[488]

4.2.2 An application for entry clearance, leave to enter, leave to remain or variation of leave to enter or remain will normally be refused if any of the following grounds apply:

(a) the applicant does not provide to the Immigration Officer or the Secretary of State any information or documents required for the purpose of deciding whether the applicant should be granted entry clearance or leave;[489]

(b) a sponsor[#] of the applicant refuses to give an undertaking to be responsible for the applicant's maintenance in the United Kingdom or fails to honour such an undertaking;[490]

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486 Current paragraphs 320(1), 322(1).

487 Current paragraphs 320(2)(a), 322(1B). Alternatively provisions in relation to criminal offending could be included within an expanded 4.3.

488 Current paragraphs 320(7A), 322(1A). Wording changed from "material" to "relevant". Note that in Appendix FM this is a discretionary ground of refusal, presumably because Appendix FM takes into consideration Article 8.

489 Current paragraphs 320(8), (8A), 322(9).

490 Current paragraphs 320(14), 322(6); apparently superfluous wording omitted.

(c) an application by a child aged under 18 years does not include, when required,[491] the written consent of the child's parent(s) or guardian[#], unless the child is an asylum seeker or is applying in conjunction with an application by his parents(s) or guardian;[492]

(d) the Immigration Officer or the Secretary of State is not satisfied that the applicant will be returnable to another country at the end of their stay;[493]

(e) it is undesirable to permit the applicant to enter or remain in the United Kingdom because, in the view of the Secretary of State, their offending has caused serious harm or they are a persistent offender who has shown a particular disregard for the law;[494]

(f) the Immigration Officer or the Secretary of State considers that it is in the public interest to exclude the applicant from the United Kingdom; this may be because of their conduct (including criminal convictions), their character or associations, or because they represent a threat to national security;[495]

(g) an NHS body[#] has notified the Secretary of State that the applicant has failed to pay a charge or charges totalling £500 or more in accordance with NHS Regulations on charges to overseas visitors;[496]

(h) the applicant has failed to pay litigation costs awarded to the Home Office;[497] or

(i) the applicant refuses to undergo a medical examination when required; this ground does not apply in the case of a person who is settled[#] in the United Kingdom.[498]

4.3 Grounds of refusal because of criminal offending

4.3.1 An application for entry clearance, leave to enter the United Kingdom or limited leave to remain is to be refused if the applicant has been convicted (whether or not on a plea of guilty) of an offence for which they have been sentenced:

(i) to imprisonment of 4 years or more;

(ii) to imprisonment of at least 12 months but less than 4 years, unless 10 years have passed since the end of the sentence; or

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491 We have kept the words "when required", but provisionally consider that they are superfluous.

492 Current paragraphs 320(16), 322(11).

493 Current paragraphs 320(13), 322(8).

494 Current paragraphs 320(18B), 322(5A).

495 Current paragraphs 320(19), 322(5) (but note differences of wording between these two sub-paragraphs of the rules). This is a mandatory ground for refusal in the Appendix FM suitability criteria.

496 Current paragraphs 320(22), 322(12).

497 Current paragraphs 320(23), 322(13).

498 Current paragraph 320(17); words "to do so by the Immigration Officer" omitted as superfluous.

(iii) to imprisonment of less than 12 months, unless 5 years have passed since the end of the sentence.[499]

4.3.2 An application for entry clearance, leave to enter the United Kingdom or limited leave to remain will normally be refused if the applicant has been convicted (whether or not on a plea of guilty) of an offence committed within the last 12 months.[500]

4.3.3 An application for indefinite leave to remain is to be refused if the applicant has been convicted (whether or not on a plea of guilty) of an offence:

(i) for which they have been sentenced to imprisonment of 4 years or more;

(ii) for which they have been sentenced to imprisonment of at least 12 months but less than 4 years, unless 15 years have passed since the end of the sentence;

(iii) for which they have been sentenced to imprisonment of less than 12 months, unless 7 years have passed since the end of the sentence; or

(iv) committed within the last 24 months or they have admitted an offence for which they have received a non-custodial sentence or other out of court disposal that is recorded on their criminal record.[501]

4.4 Additional grounds of refusal applicable to entry clearance and leave to enter

4.4.1 An application for entry clearance or leave to enter the United Kingdom is to be refused if any of the following grounds apply (note that paragraph 4.4.1(h) is subject to paragraphs 4.4.2 to 4.4.6):

(a) the applicant does not produce:

(i) a valid national passport or other document establishing their identity and nationality; or

(ii) in the case of a stateless person[#] a document establishing their identity issued by a state of which they are not a national save where the person's statelessness or other status prevents the person from obtaining a document satisfactorily establishing their nationality;[502]

(b) the applicant is seeking entry into the United Kingdom with the intention of entering another part of the common travel area[#] and the Immigration Officer is not satisfied that the applicant is acceptable to the immigration authorities of that other part of the common travel area;[503]

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499 Current paragraph 320(2). The current rules do not contain a ground of refusal based on previous convictions applicable to limited leave to remain.

500 Current paragraph 320(18A).

501 Current paragraph 322(1C). We have attempted some simplification of the wording.

502 Current paragraph 320(3), simplified.

503 Current paragraph 320(4).

(c) a visa national[#] seeking entry into the United Kingdom does not produce a passport or other travel document endorsed with a valid and current entry clearance issued for the purpose for which entry is sought;[504]

(d) the Secretary of State has personally directed that the exclusion of the applicant from the United Kingdom is conducive to the public good;[505]

(e) the medical inspector[#] certifies that it is undesirable to admit the applicant to the United Kingdom for medical reasons; this ground does not apply:

(i) to a person who is settled in the United Kingdom; or

(ii) where the Immigration Officer is satisfied that there are strong compassionate reasons justifying admission;[506]

(g) the applicant does not attend an interview [requested by an entry clearance officer] without providing a reasonable explanation for this; or[507]

(h) the applicant has, while aged 18 or over, breached the immigration laws of the United Kingdom by:

(i) overstaying[#];

(ii) breaching a condition of leave;

(iii) entering the United Kingdom illegally; or

(iv) using deception, whether or not successfully, in an application for entry clearance or leave.[508]

4.4.2 Paragraph 4.4.1(h) does not apply where:

(a) the applicant left the United Kingdom voluntarily and not at the expense, directly or indirectly, of the Secretary of State, more than 12 months ago;

(b) the applicant left the United Kingdom voluntarily at the expense, directly or indirectly, of the Secretary of State either:

(i) more than 5 years ago; or

(ii) more than 2 years ago and within 6 months of receiving notice of liability for removal or, if later, within 6 months of the date upon which the applicant no longer had a pending appeal or administrative review;

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504 Current paragraph 320(5).

505 Current paragraph 320(6). This paragraph currently only applies to entry clearance and leave to enter. We provisionally propose that this paragraph be made applicable to leave to remain, included in our section 4.2.

506 Current paragraph 320(7). The current paragraph refers to “confirmation” by the medical inspector.

507 Current paragraph 320(7D). See also the footnote to para 4.2.2(a) above.

508 Current paragraph 320(7B).

(c) the applicant left or was removed from the United Kingdom more than 5 years ago as a condition of a caution[#] issued in accordance with section 22 of the Criminal Justice Act 2003; or

(d) the applicant was removed or deported more than 10 years ago.[509]

(e) Paragraph 4.4.1(h) does not apply where the applicant used deception in an application or in order to obtain documents from the Secretary of State or a third party required in support of the application more than 10 years ago.[510]

4.4.3 Paragraph 4.4.1(h) does not apply to overstaying where:

(a) the applicant overstayed:

(i) for 90 days or less where the overstaying began before 6 April 2017; or

(ii) for 30 days or less where the overstaying began on or after 6 April 2017; and

(b) the applicant left the United Kingdom voluntarily, not at the expense, directly or indirectly, of the Secretary of State.[511]

4.4.4 In calculating the period of the applicant's overstaying the following shall be disregarded:

(a) overstaying of up to 28 days where, prior to 24 November 2016, an application for leave to remain was made during that time, together with any period of overstaying pending the determination of that application and any related appeal or administrative review;

(b) overstaying in relation to which paragraph 39E of the Rules (concerning out of time applications made on or after 24 November 2016) applied, together with any period of overstaying pending the determination of any related appeal or administrative review;

(c) overstaying to which *** of these Rules applied, together with any period of overstaying pending the determination of any related appeal or administrative review;[512] and

(d) overstaying arising from a decision of the Secretary of State which is subsequently withdrawn, quashed, or which the Court or Tribunal has required the Secretary of State to reconsider in whole or in part, unless the challenge to the decision was brought more than three months from the date of the decision.[513]

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509 Current paragraph 320(7B) (proviso).

510 Current paragraph 320(7B) (proviso).

511 Current paragraph 320(7B) (proviso).

512 Paragraph corresponding to paragraph 39E of the Rules.

513 Current paragraph 320(7BB).

4.4.5 If the applicant has committed more than one breach of the immigration laws, only the breach that leads to the longest period of ineligibility for entry clearance or leave to enter is to be taken into account.[514]

4.4.6 An application for entry clearance or leave to enter will normally be refused if any of the following grounds apply:

(a) the applicant's passport or travel document:

(i) is issued by a territorial entity or authority which is not recognised or is not dealt with as a government by Her Majesty's government or does not accept valid United Kingdom passports; or

(ii) does not comply with international passport practice;[515]

(b) the applicant fails to provide physical data[#];[516]

(c) an applicant for leave to enter as a returning resident does not satisfy the Immigration Officer that they meet the requirements of paragraph *** of these Rules (settlement[#]) or that they seek leave to enter for the same purpose as that for which earlier leave was granted;[517] or

(d) the applicant has previously contrived in a significant way to frustrate the intentions of the immigration rules by:

(i) overstaying[#];

(ii) breaching a condition of leave;

(iii) being an illegal entrant[#]; or

(iv) using deception (whether or not successfully) in an application for entry clearance, leave to enter or remain or in order to obtain documents from the Secretary of State or a third party required in support of the application;[518] and

there are aggravating circumstances such as:

- absconding[#];
- not complying with temporary admission[#] or reporting[#] restrictions or bail[#] conditions;

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514 Current paragraph 320(7B) (proviso).

515 Current paragraph 320(10); we consider that it would be desirable to standardise the requirements as to passports and travel documents and put them among the grounds applicable to all forms of leave in section 4.2.2.

516 Current paragraph 320(20). Reference to the Nationality, Immigration and Asylum Act 2002 omitted.

517 Current paragraph 320(9).

518 Current paragraph 320(11).

- using an assumed identity or multiple identities;
- switching nationality;
- making frivolous applications; or
- not complying with the redocumentation[#] process.

4.5 Additional grounds of refusal applicable to leave to remain, variation of leave to enter and variation of leave to remain

4.5.1 Limited or indefinite leave to remain under any Part of the Immigration Rules is to be refused where:

(a) the Secretary of State has made a decision under Article 1F of the Refugee Convention[#] to exclude the person from the Refugee Convention or under paragraph *** of these Rules to exclude them from humanitarian protection[#];[519]

(b) the Secretary of State has previously made a decision that they are a person to whom Article 33(2) of the Refugee Convention applies because there are reasonable grounds for regarding them as a danger to the security of the United Kingdom;

(c) the Secretary of State considers that they are a person to whom sub-paragraph (a) or (b) would apply except that:

(i) the person has not made a protection claim; or

(ii) the person made a protection claim which has already been finally determined without reference to Article 1F of the Refugee Convention or paragraph *** of these Rules;[520] or

(d) the Secretary of State has previously made a decision that they are a person to whom Article 33(2) of the Refugee Convention applies because, having been convicted by a final judgment of a particularly serious crime, they constitute a danger to the community of the United Kingdom.[521]

4.5.2 Limited or indefinite leave to remain under any Part of the Immigration Rules will normally be refused if any of the following grounds apply:

(a) the applicant does not attend an interview [requested by the Secretary of State] and there is no reasonable explanation for this;[522]

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519 Paragraph corresponding to paragraph 339D of the Rules.

520 Paragraph corresponding to paragraph 339D of the Rules.

521 Current paragraph 322(1E).

522 Current paragraph 322(10); apart from the (superfluous) reference to the requesting official, this is in identical terms to paragraph 320(7D), reproduced at 4.4.1(g) above. However, in paragraph 320(7D) it is among the mandatory grounds for refusal whereas in 322(10) it is normally a ground for refusal. We again suggest that the Rules should be made uniform and included in our section 4.2.

(b) the applicant makes false representations[#] or does not disclose any relevant fact for the purpose of obtaining a document from the Secretary of State that indicates the person has a right to reside[#] in the United Kingdom;[523]

(c) false representations[#] were made or relevant facts were not disclosed (see paragraph 4.2.1(c)) in an earlier application;[524]

(d) the applicant has not complied with any condition attached to the current or a previous grant of leave to enter or remain; this ground does not apply if leave has already been granted with knowledge of a previous breach;[525]

(e) the applicant has not honoured a declaration or undertaking given orally or in writing as to the intended duration and/or purpose of their stay;[526] or

(f) the applicant or their dependants have had recourse to public funds[#] for their maintenance or accommodation.[527]

4.6 Grounds on which leave to enter or remain is to be cancelled at an immigration control point or while the holder is outside the United Kingdom

4.6.1 Leave to enter or remain is to be cancelled if the holder[#] is at an immigration control point[#] or outside the United Kingdom and any of the following grounds apply:

(a) paragraph 4.2.1(b) (deportation order);[528]

(b) paragraph 4.2.1(c) (false representations and non-disclosure);[529]

(c) paragraph 4.2.2(e) (offending behaviour);[530]

(d) paragraph 4.2.2(f) (exclusion for the public good);[531]

(e) paragraph 4.3.1 or 4.3.2 (convictions);[532]

(f) paragraph 4.4.1(d) (the Secretary of State has personally directed exclusion);[533]

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523 Current paragraph 322(2A). This specifically refers to deception which has been used in a previous EEA application.

524 Current paragraph 322(2).

525 Current paragraph 322(3).

526 Current paragraph 322(7).

527 Current paragraph 322(4).

528 Current paragraphs 321A(4A), 320(2).

529 Current paragraph 321A(2).

530 Current paragraphs 321A(4A), 320(18B).

531 Current paragraphs 321A(5) (also 321A(4A), 320(19)).

532 Current paragraphs 321A(4A), 320(2), 320(18A).

533 Current paragraph 321A(4) (also 321A(4A), 320(6)).

(g) paragraph 4.4.1(e) (medical reasons);[534]

(h) where the holder is outside the United Kingdom, the holder has not supplied information or documents requested by an Immigration Officer or the Secretary of State;[535] or

(i) there has been a change of the holder's circumstances since the leave was given such that the leave should be cancelled.[536]

4.7 Grounds on which leave to enter or remain may be curtailed

4.7.1 Leave to enter or remain may be curtailed[#] if any of the following grounds apply:

(a) the grounds set out in paragraphs 4.2.1(d), 4.2.2(b), 4.2.2(e) or 4.2.2(f), 4.5.2(d) or 4.5.2(f);[537]

(b) the holder uses deception (whether or not successfully) in seeking leave to remain or a variation of leave to remain;[538]

(c) the holder ceases to meet the requirements of the Rules under which leave to enter or remain was granted; [539]

(d) the holder's leave to remain is as the dependent of another person whose leave to remain is being curtailed and the holder does not qualify for leave to remain in their own right;[540]

(e) the holder has, within 6 months of first being granted leave to remain, committed an offence for which they have subsequently been sentenced to a sentence of imprisonment;[541]

(f) the holder has, without reasonable explanation, failed to comply with a request under paragraph *** (interview in relation to grounds of curtailment);[542] or

(g) the holder has ceased to be eligible for refugee protection[#] or humanitarian protection[#].[543]

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534 Current paragraph 321A(3).

535 Current paragraph 321A(6).

536 Current paragraph 321A(1).

537 Current paragraph 323(i).

538 Current paragraph 323(ia).

539 Current paragraph 323(ii).

540 Current paragraph 323(iii) and (vii).

541 Current paragraph 323(v).

542 Current paragraph 323(vi).

543 Current paragraph 323(iv).

Appendix 4: Redraft of provisions in Appendix FM (Family members) relating to partners

Partners

12.1 Relationship requirements

12.1.1 The applicant's partner must be:

(a) a British Citizen[#] who is in the UK or coming to the UK with the applicant as their partner; or

(b) a person who is present and settled[#] in the UK or is being admitted for indefinite leave to remain on the same occasion as the applicant.

12.1.2 In an application for entry clearance or limited leave to remain, the applicant's partner may also be in the UK with refugee leave[#] or with humanitarian protection[#].[544]

12.1.3 The applicant and their partner must be aged 18 or over at the date of application.[545]

12.1.4 The applicant and their partner must not be within the prohibited degree of relationship[#].[546]

12.1.5 The applicant and their partner must have met in person.[547]

12.1.6 The relationship between the applicant and their partner must be genuine and subsisting.[548]

12.1.7 If the applicant and partner are married or in a civil partnership it must be a valid marriage or civil partnership.[549]

12.1.8 Any previous relationship of the applicant or their partner must have broken down permanently, unless it is a polygamous relationship (see paragraph ***).[550]

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544 Current E-ECP.2.1 and E-LTRP.1.2.

545 Current E-ECP.2.2 and 2.3 and E-LTRP.1.3 and 1.4.

546 Current E-ECP.2.4 and E-LTRP.1.5.

547 Current E-ECP.2.5 and E-LTRP.1.6.

548 Current E-ECP.2.6 and E-LTRP.1.7.

549 Current E-ECP.2.7 and E-LTRP.1.8.

550 Current E-ECP.2.9 and E-LTRP.1.9. At present these Rules cross-refer to para 278(i) of the Rules, the text of which reads "his or her marriage or civil partnership to [sic] the sponsor is polygamous". That seems to us to be both unnecessary (as insertion of "polygamous" into the rule in Appendix FM would produce the same result, saving the reader the need to go outside the Appendix) and inappropriate, since this section of Appendix FM does not use the term "sponsor". We envisage that in new Rules the term "polygamous relationship" would either be defined in the definitions section or explained elsewhere in the Rules.

12.1.9 The applicant and partner must intend to live together permanently in the UK.[551]

12.1.10 If the applicant is a fiancé(e) or proposed civil partner they must be seeking to enter or remain in the UK to enable their marriage or civil partnership to take place.[552]

12.1.11 If the applicant is a fiancé(e) or proposed civil partner, neither the applicant nor their partner can be married to, or in a civil partnership with, another person at the date of application.[553]

12.1.12 If the applicant is applying for leave to remain:

(a) the applicant's partner must be the same partner as when entry clearance was granted;[554]

(b) if the applicant is in the UK with leave as a fiancé(e) or proposed civil partner and the marriage or civil partnership has not taken place, it must be shown that there is a good reason for this and that it will take place within the next 6 months;[555] and

(c) except where the applicant is in the UK as a fiancé(e) or proposed civil partner:

(i) the applicant and their partner must have lived together in the UK since the applicant's arrival in the UK or their last grant of limited leave to remain as a partner; or

(ii) there must be a good reason, consistent with a continuing intention to live together permanently in the UK, for any period in which they have not done so.[556]

12.2 Immigration status requirements

12.2.1 These requirements only apply to applications for leave to remain.

12.2.2 The applicant must not be in the UK:

(a) as a visitor; or

(b) with valid leave granted for a period of 6 months or less, unless that leave is as a fiancé(e) or proposed civil partner, or was granted pending the outcome of family court or divorce proceedings.[557]

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551 Current E-ECP.2.10 and E-LTRP.1.10.

552 Current E-ECP.2.8. Currently this para only applies to entry clearance but we see no reason why it should not apply generally.

553 Current E-ECP.2.9(ii). Again this para only applies to entry clearance but we see no reason why it should not apply generally.

554 Current E-LTRP.1.12.

555 Current E-LTRP.1.11.

556 Current E-LTRP.1.10.

557 Current E-LTRP.2.1.

12.2.3 The applicant must not be in the UK:

(a) on immigration bail, unless:

(i) the Secretary of State is satisfied that the applicant arrived in the UK more than 6 months prior to the date of application; and

(ii) paragraph *** applies; or

(b) in breach of immigration laws (except that, where paragraph *** of these Rules applies, any current period of overstaying will be disregarded), unless paragraph ** applies.[558]

12.3 Financial requirements

12.3.1 Unless section 13.6 (partners in receipt of relevant benefits) applies, the applicant must be able to show sufficient income and/or savings so as to meet their financial requirements. The financial requirements can be met from relevant income or relevant savings (see section 13.5) or from a combination of relevant income and relevant savings.

12.3.2 The financial requirements can be met without any need to show additional savings if there is annual income met from relevant income of at least:

(i) £18,600; plus

(ii) £3,800 for the first child; and

(iii) £2,400 for each additional child.

12.3.3 In paragraph 13.4.2 “child” means a dependent child of the applicant or the applicant’s partner who is:

(i) under the age of 18 years, or who was under the age of 18 years when they were first granted entry under this route;

(ii) applying for entry clearance or leave to remain as a dependant of the applicant or the applicant’s partner, or is in the UK with leave as their dependant;

(iii) not a British Citizen or settled in the UK; and

(iv) not an EEA national with a right to be admitted to or reside in the UK under the Immigration (EEA) Regulations 2016.[559]

12.4 Meeting the financial requirements from relevant savings

12.4.1 The financial requirements can be met in whole or in part by relevant savings.

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[558] Current E-LTRP.2.2. Para corresponding to para 39E of the Rules.

[559] Current E-ECP.3.1 and E-LTRP.3.1. Note that limited leave to remain states at (c) “unless para EX.1. applies”.

12.4.2 In order to meet the financial requirements, savings must amount to:

(a) £16,000; plus

(b) additional savings of an amount equal to:

(i) in an application for entry clearance or limited leave to remain, 2½ times the difference between the couple's relevant income and the income required under paragraph 13.3.2; or

(ii) in an application for indefinite leave to remain, the difference between the couple's relevant income and the income required under paragraph 13.3.2.[560]

12.5 Relevant income and savings

12.5.1 In an application for entry clearance, relevant income and savings are:

(a) income of the partner from specified employment or self-employment, which, in respect of a partner returning to the UK with the applicant, can include specified employment or self-employment overseas and in the UK;

(b) specified pension income of the applicant and partner;

(c) any specified maternity allowance or bereavement benefit received by the partner in the UK or any specified payment relating to service in HM Forces received by the applicant or partner;

(d) other specified income of the applicant and partner; and

(e) specified savings of the applicant and partner.[561]

12.5.2 In an application for leave to remain or indefinite leave to remain, relevant income and savings are:

(a) income of the partner from specified employment or self-employment;

(b) income of the applicant from specified employment or self-employment unless they are working illegally;

(c) specified pension income of the applicant and partner;

(d) any specified maternity allowance or bereavement benefit received by the applicant and partner in the UK or any specified payment relating to service in HM Forces received by the applicant or partner;

(e) other specified income of the applicant and partner;

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560 Current E-ECP.3.1, E-LTRP.3.1 and E-ILRP.1.3(1A).

561 Current E-ECP.3.2. This para and the one that follows are reproduced as they stand. We have provisionally proposed that Appendix FM and Appendix FM-SE be brought together in new Rules; doing so is outside the scope of the current specimen drafting exercise.

(f) income from the sources at (b), (d) or (e) of a child of the applicant or of the applicant's partner (see paragraph 13.3.3) who is aged 18 years or over; and

(g) specified savings of the applicant, partner and a child of the applicant or of the applicant's partner (see paragraph 13.3.3) who is aged 18 years or over. [562]

12.6 Partners in receipt of relevant social security benefits

12.6.1 Sections 13.3 to 13.5 do not apply if (a) the applicant's partner is in receipt of a relevant social security benefit and (b) paragraph 13.6.3 applies.

12.6.2 Relevant social security benefits are:

(a) disability living allowance;

(b) severe disablement allowance;

(c) industrial injury disablement benefit;

(d) attendance allowance;

(e) carer's allowance;

(f) personal independence payment;

(g) Armed Forces Independence Payment or Guaranteed Income Payment under the Armed Forces Compensation Scheme;

(h) Constant Attendance Allowance, Mobility Supplement or War Disablement Pension under the War Pensions Scheme; and

(i) Police Injury Pension.

12.6.3 The applicant's partner must be able to maintain and accommodate themselves, the applicant and any dependants adequately in the UK without recourse to public funds[#].[563]

12.7 Accommodation requirements

12.7.1 There must be adequate accommodation, without recourse to public funds, for the family, including other family members who are not included in the application but who live in the same household. The family must own or occupy the accommodation exclusively, unless paragraph ***[564] applies. Accommodation will not be regarded as adequate if:

(a) it is, or will be, overcrowded; or

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562 Current E-LTRP.3.2.

563 Current E-ECP.3.3 and E-LTRP.3.3.

564 Para corresponding to para EX.1 of Appendix FM.

(b) it contravenes public health regulations.[565]

12.8 English language requirements

12.8.1 Unless they are exempt from English language requirements (see paragraph 13.8.4), the applicant must provide specified evidence that they:

(a) are a national of a majority English speaking country[#];

(b) have passed an English language test in speaking and listening at a minimum of level A1 of the Common European Framework of Reference for Languages with a provider approved by the Secretary of State;

(c) have an academic qualification which is either a Bachelor's or Master's degree or PhD awarded by an educational establishment in the UK; or, if awarded by an educational establishment outside the UK, is deemed by UK NARIC to meet or exceed the recognised standard of a Bachelor's or Master's degree or PhD in the UK, and UK NARIC has confirmed that the degree was taught or researched in English to level A1 of the Common European Framework of Reference for Languages or above; or

(d) are exempt from the English language requirement under paragraph 13.8.4.[566]

12.8.2 Paragraph 13.8.1 does not apply if an applicant has met the English language requirement in a previous application for entry clearance or leave to remain as a partner or parent.[567]

12.8.3 But where the applicant:

(a) has been granted entry clearance or leave to remain as a partner or parent on the basis that they had passed an English language test in speaking and listening at level A1 of the Common European Framework of Reference for Languages; and

(b) seeks further leave to remain as a partner after 30 months in the UK with leave as a partner

the applicant must provide specified evidence that:

(i) they have passed an English language test in speaking and listening at a minimum of level A2 of the Common European Framework of Reference for Languages with a provider approved by the Secretary of State; or

(ii) paragraph 13.8.1(a), (c) or (d) applies.[568]

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565 Current E-ECP.3.4 and E-LTRP.3.4.

566 Current E-ECP.4.1 and E-LTRP.4.1.

567 Current E-LTRP.4.1.

568 Current E-LTRP.4.1A.

12.8.4 An applicant is exempt from English language requirements if at the date of application:

(a) the applicant is aged 65 or over;

(b) the applicant has a physical or mental condition which prevents the applicant from meeting the requirement; or

(c) there are exceptional circumstances which prevent the applicant from being able to meet the requirement.[569]

12.9 Additional requirements for indefinite leave to remain as a partner

12.9.1 The applicant must be in the UK with valid leave to remain as a partner under this Part (except that, where paragraph ***[570] of these Rules applies, any current period of overstaying will be disregarded).[571]

12.9.2 The applicant must satisfy the requirements of [Appendix KoLL: Knowledge of language and life] of these Rules.[572]

12.9.3 Subject to paragraphs 13.9.4 to 13.9.8, the applicant must, at the date of application, have completed a continuous period of at least 60 months in the UK with:

(a) leave to enter granted on the basis of entry clearance as a partner; or

(b) limited leave to remain as a partner; or

(c) a combination of (a) and (b). [573]

12.9.4 If any of the leave was granted pursuant to section *** (special circumstances), the applicant must have completed a continuous period of 120 months in the UK.[574]

12.9.5 Periods spent as a fiancé(e) or proposed civil partner do not count.[575]

12.9.6 Periods when the applicant's partner was not the same partner do not count.[576]

12.9.7 Periods spent outside the UK also count, if paragraph *** applies to them.[577]

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569 Current E-ECP.4.2 and E-LTRP.4.2.

570 Para corresponding to para 39E of the Rules.

571 Current E-ILRP.1.2.

572 Current E-ILRP.1.6, simplified.

573 Current E-ILRP 1.3(1)(a).

574 Current E-ILRP 1.3(1)(b). Note that the draft does not attempt to reproduce the effect of para E ILRP.1.3(1B).

575 Current E-ILRP.1.3, simplified.

576 Current E-ILRP.1.4, simplified.

577 Current E-ILRP.1.5.

12.9.8 Any current or previous period of overstaying to which one or more of the conditions set out in paragraph 4.4.4[578] applies will not count towards the periods in para 13.9.2, but will be disregarded for the purpose of determining whether residence with leave was continuous.[579]

12.10 Additional general ground for refusal of leave

12.10.1 This section contains a general ground for refusal of leave to remain as a partner, in addition to the general grounds for refusal in Part 4 of these Rules.

12.10.2 Leave will normally be refused if the Secretary of State has given notice to the applicant and their partner under section 50(7)(b) of the Immigration Act 2014 that one or both of them have not complied with the investigation of their proposed marriage or civil partnership.[580]

12.11 Grant of entry clearance as a partner

12.11.1 Entry clearance as a partner (other than as a fiancé(e) or proposed civil partner) will be granted:

(a) for an initial period not exceeding 33 months; and

(b) subject to a condition of no recourse to public funds[#].

12.11.2 Where section *** (exceptional circumstances) applies, the condition of no recourse to public funds[#] will not be imposed if the decision-maker decides under paragraph ** that the condition should not apply.

12.11.3 Entry clearance as a fiancé(e) or proposed civil partner will be granted:

(a) for a period not exceeding 6 months;

(b) subject to a prohibition on employment; and

(c) subject to a condition of no recourse to public funds.

12.12 Grant of limited leave to remain as a partner

12.12.1 Limited leave to remain as a partner (other than as a fiancé(e) or proposed civil partner) will be granted:

(a) for a period not exceeding 30 months; and

(b) subject to a condition of no recourse to public funds[#].

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578 See our specimen redraft of Part 9 (General grounds for refusal) in appendix 3.

579 Current E-ILRP.1.5A, simplified.

580 Current S-LTR.2.5. Reference to “leave to remain” omitted as unnecessary detail. Note that para S-EC1.9 of Appendix FM technically applies to partners, but it appears to us to exist purely for the purposes of applications under the part of the Appendix governing applications for leave to enter or remain as a child.

12.12.2 Where section *** (exceptional circumstances) applies, the condition of no recourse to public funds[#] will not be imposed if the decision-maker decides under paragraph ** that the condition should not apply.

12.12.3 Limited leave to remain as a fiancé(e) or proposed civil partner will be granted:

(a) for a period not exceeding 6 months;

(b) subject to a prohibition on employment; and

(c) subject to a condition of no recourse to public funds.

12.12.4 An applicant for indefinite leave to remain as a partner will be granted further limited leave to remain as a partner for a period not exceeding 30 months, and subject to a condition of no recourse to public funds, if

(a) they only fail to meet the requirements for indefinite leave because paragraph 4.3.3(iii) or 4.3.3(iv) (General grounds for refusal) applies[581] and/or they do not satisfy the requirements of Part 22 (Knowledge of language and life); or

(b) section *** (special circumstances) applies.[582]

[581] See our specimen redraft of Part 9 (General grounds for refusal) in appendix 3.

[582] Current D-ILRP 1.2 and 1.3.

Appendix 5: Table of destinations

Table of destinations	
Current Parts and Appendices to the Rules	*Our provisionally proposed structure*
Index	Retained
Introduction	Retained and moved to Part 1 (How to use the Immigration Rules)
Part 1 (Leave to enter or stay in the UK)	Split: paras 7 to 23, 31 to 33A moved to Part 2: Leave to enter, entry clearance and variation of leave to enter or remain Paras 23A and 23B, 24 to 30C, 34 to 34K, 34Y, 35 to 39B, 39C to 39D), 39E moved to Part 3: Making applications for leave to enter, entry clearance and leave to remain Paras 34L to 34Y moved to Part 24 Administrative review
Part 2 (Transitional provisions)	Omitted
Part 3 (Students)	Merged into Part 8 (Students)
Part 4 (Work experience)	Omitted
Part 5 (Working in the UK)	Merged into Part 9 (Work). Provisions on dependants of Part 5 migrants (paras 193A to 199B) merged into Part 12 (Family members of workers, businesspersons, investors and students)
Part 6 (Self-employment and business people)	Omitted
Part 6A (Points-based system)	Separated into Part 8 (Students), Part 9 (Work), Part 10 (Short-term work and work experience), Part 11 (Business and investment)

Part 7 (Other categories)	Retained and moved to Part 16 (Other categories), but would only now currently cover the relevant Afghan citizen category • retired persons of independent means Omitted; • EEA Nationals and their families Omitted; • long residence moved to Part 14 (Long residence and private life); • HM Forces merged into Part 15 (Armed forces) • rights of access to a child moved to Part into Part 12 (Family members of British citizens, settled persons and persons with refugee/humanitarian protection status) • parent of a Tier 4 (child) student moved to Part 12 (Family members of workers, businesspersons, investors and students)
Part 8 (Family members)	Separated/merged into Part 12 (Family members of British citizens, settled persons and persons with refugee/humanitarian protection status) and Part 13 (Family members of workers, businesspersons, investors and students)
Part 9 (General grounds for refusal)	Retained and moved to Part 4 (General grounds for refusal)
Part 10 (Registering with the police)	Merged into Part 6 (Common conditions of leave)
Part 11 (Asylum)	Retained and moved to Part 19 (Asylum)

Part 11A (Temporary protection)	Retained and moved to Part 20 (Temporary protection)
Part 11B	Merged into Part 19 (Asylum)
Part 12 (Procedure and rights of appeal)	Merged into Part 19 (Asylum)
Part 13 (Deportation)	Retained and moved to Part 22 (Deportation)
Part 14 (Stateless persons)	Retained and moved to Part 21 (Stateless persons)
Part 15 (Condition to hold an ATAS clearance certificate)	Merged into Part 6 (common conditions of leave)
Appendix 2 (Police registration)	Merged into Part 6 common conditions of leave)
Appendix 6 (Academic subjects that need a certificate)	Merged into Part 8 (Students)
Appendix 7 (Overseas workers in private households)	Merged into Part 10 (Short-term work and work experience)
Appendix A (Attributes)	Separated into Part 8 (Students), Part 9 (Work), Part 10 (Short-term work and work experience) and Part 11 (Business and investment)
Appendix AR (Administrative review)	Retained and moved to Part 24 (Administrative review)
Appendix Armed Forces	Retained and moved to Part 15 (Armed forces)
Appendix B (English language)	Separated into Part 8 (Students), Part 9 (Work), Part 10 (Short-term work and work experience), Part 11 (Business and investment)
Appendix C (Maintenance (funds))	Separated into Part 8 (Students), Part 9 (Work), Part 10 (Short-term work and work experience), Part 11 (Business and investment)
Appendix D (Highly skilled migrants)	Omitted

Appendix E (Maintenance (funds) for the family of Relevant Points Based System Migrants)	Retained and moved to Part Part 13 (Family members of workers, businesspersons, investors and students))
Appendix F (Archived Immigration Rules)	Omitted
Appendix FM (Family members)	Retained and moved to Part 12 (Family members of British citizens, settled persons and persons with refugee/humanitarian protection status)
Appendix FM-SE (Family members – specified evidence)	Merged into Part 12 (Family members of British citizens, settled persons and persons with refugee/humanitarian protection status)
Appendix G (Youth mobility scheme)	Merged into Part 10 (Short-term work and work experience)
Appendix H (Tier 4 documentary requirements)	Merged into Part 8 (Students)
Appendix J (Codes of practice for skilled work)	Retained and moved to Appendix 3 (Codes of practice for work (sponsors))
Appendix K (Shortage occupation list)	Retained and moved to Appendix 5 (Shortage occupation list)
Appendix KoLL	Retained and moved to Part 5 (Knowledge of language and life requirements for indefinite leave applications)
Appendix L (Tier 1 competent body criteria)	Merged with Part 11 (Business and investment)
Appendix M (Sports governing bodies)	Retained and moved to Appendix 6 (Sports governing bodies)
Appendix N (Authorised exchange schemes)	Retained and moved to Appendix 7 (Authorised exchange schemes)
Appendix O (Approved English language tests)	Retained and moved to Appendix 2 (Approved English language tests)
Appendix P (Lists of financial institutions)	Retained and moved to Appendix 3 (Lists of financial institutions)

Appendix SN (Service of notices)	Retained and moved to Part 24 (Service of notices)
Appendix T (Tuberculosis screening)	Retained and moved to Appendix 1 (Tuberculosis screening)
Appendix V (Visitors)	Retained and moved to Part 7 (Visitors)

Appendix 6: Immigration legislation since the Immigration Act 1971

1.1 Since the Immigration Act 1971, at least 16 Acts been passed dealing wholly or partly with immigration or nationality, including the following.

BRITISH NATIONALITY ACT 1981

1.2 The British Nationality Act 1981 abolished the rule whereby people born in the UK were British by virtue of their birth and put an end to the ability of Commonwealth citizens to acquire the right of abode by completing five years' residence.

IMMIGRATION ACT 1988

1.3 The Immigration Act 1988 made various amendments to the Immigration Act 1971, principally relating to Commonwealth citizens settled before 1973, polygamous marriages and the offence of knowingly overstaying. Section 7 of the Act provides that a person who is entitled to enter or remain in the UK by virtue of an enforceable European Union right or under regulations made pursuant to the European Communities Act 1972 does not require leave to enter or remain under the 1971 Act.

ASYLUM AND IMMIGRATION ACT 1996

1.4 The Asylum and Immigration Act 1996 introduced criminal liability, subject to defences, for employers of employees who are not permitted to work in the UK. Its provisions have been replaced by provisions in the Immigration, Asylum and Nationality Act 2006.

IMMIGRATION AND ASYLUM ACT 1999

1.5 The Immigration and Asylum Act 1999 introduced a system of administrative removal from the UK for overstayers; changes to the appeal system with the possible loss of appeal rights if grounds are not raised at the outset; a requirement for registrars to report suspicious marriages; and regulation of immigration advisers.

NATIONALITY, IMMIGRATION AND ASYLUM ACT 2002

1.6 The Nationality, Immigration and Asylum Act 2002 reformed the appeal system. Sections 82 and 84, now as amended by the Immigration Act 2014, provide for rights and grounds of appeal.

1.7 In addition, the Act brought in new requirements and procedures for the acquisition of British citizenship; removed the distinction between illegitimate and legitimate children in respect of citizenship; and brought in a new power to revoke indefinite leave to remain.

ASYLUM AND IMMIGRATION (TREATMENT OF CLAIMANTS, ETC) ACT 2004

1.8 The Asylum and Immigration (Treatment of Claimants, etc) Act 2004 introduced a new single-tier appeal body (now replaced); new criminal offences relating to immigration; restrictions on support for asylum seekers; and the requirement to obtain a certificate of approval prior to marriage for individuals with limited leave in the UK (no longer in force).

IMMIGRATION, ASYLUM AND NATIONALITY ACT 2006

1.9 The Immigration, Asylum and Nationality Act 2006 introduced civil penalties for employers found to have employees lacking the requisite permission to work in the UK and introduced a new criminal offence of knowingly employing an adult who cannot lawfully work in the UK.

UK BORDERS ACT 2007

1.10 The UK Borders Act 2007 introduced a requirement for a biometric document for migrants; a new criminal offence of assaulting an immigration officer; automatic deportation in respect of certain criminal convictions; and provision for sharing information with HM Revenue & Customs.

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

1.11 The Tribunals, Courts and Enforcement Act 2007 brought in a new statutory framework for appeals. From February 2010, immigration appeals have been dealt with by the First-tier Tribunal (Immigration and Asylum Chamber) and the Upper Tribunal (Immigration and Asylum Chamber). The Upper Tribunal can consider appeals based on an error in law and it also has the power to hear judicial review cases. This new system replaced the previous Asylum and Immigration Tribunal.

CRIMINAL JUSTICE AND IMMIGRATION ACT 2008

1.12 The Criminal Justice and Immigration Act 2008 made provision for a new immigration status for designated foreign nationals who have committed terrorism or other serious criminal offences and cannot be removed from the UK.

BORDERS, CITIZENSHIP AND IMMIGRATION ACT 2009

1.13 The Borders, Citizenship and Immigration Act 2009 confers certain functions of HM Revenue & Customs upon immigration officers and allows further conditions to be placed on student leave.

1.14 The Act also introduced the duty to safeguard and promote the welfare of children.[583] As Lady Hale observed in *ZH (Tanzania) v Secretary of State for the Home Department*, section 55 of the Act at least partially reflects the obligations under the United Nations Convention on the Rights of the Child.[584]

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583 Borders, Citizenship and Immigration Act 2009, s 55.

584 *ZH (Tanzania) v Secretary of State for the Home Department* [2011] UKSC 4 at [12].

LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS ACT 2012

1.15 The Legal Aid, Sentencing and Punishment of Offenders Act 2012 allowed certain immigration offenders to be issued with a conditional caution as an alternative to prosecution, with the aim of bringing about their departure from the UK and preventing their return for a period of time. It also made provision for spent convictions to be disclosed and taken into account in relation to immigration or nationality applications and decisions.

CRIME AND COURTS ACT 2013

1.16 The Crime and Courts Act 2013 enables a written notice of a removal decision to be issued at the same time as a decision on an application to vary limited leave to enter or remain or a decision to revoke leave.

1.17 It also removed a full right of appeal against a refusal of entry clearance for family visitors; removed an in-country right of appeal against a decision to vary leave where, as a result of the variation, the person has no leave, in cases where the Secretary of State certifies that it is no longer conducive to the public good for the person to have leave; and introduced a power for the Secretary of State to certify in national security cases that removal of a person from the UK pending the outcome of their appeal against a deportation order would not breach the UK's obligations under the European Convention on Human Rights, and the process to appeal against such a certification.

IMMIGRATION ACT 2014

1.18 The Immigration Act 2014 introduced a wide range of changes to the system of immigration control including:

(1) simplifying and extending the circumstances in which a person is liable to administrative removal;

(2) restricting the circumstances in which an immigration bail application may be made;

(3) providing for the collection and retention of biometric information;

(4) substantially restricting the range of immigration decisions that can be appealed to refusal of a human rights or protection claim and revocation of protection status, and providing for more appeal rights to be exercised only from abroad, to include appeals brought by those liable to deportation where certified by the Secretary of State;

(5) providing for a system of administrative review to be incorporated into the Immigration Rules in certain cases where there is no right of appeal;

(6) prescribing the regard that courts and tribunals must have to the public interest when considering whether a decision breaches a person's rights to respect for private and family life under Article 8 of the European Convention on Human Rights;

(7) implementing an immigration health charge which is paid as part of an application for limited leave to enter or remain.

1.19 Other changes focussed on measures to make it more difficult for those without valid immigration status to live in the UK, for example by introducing new penalties for landlords who enter into residential tenancies with people who do not have valid immigration status; introducing a requirement for banks and building societies to check the immigration status of current account applicants; and introducing provisions for a person to be refused a driving licence, or to have a driving licence revoked, where the person requires leave and does not have it.

1.20 The Act provided the Secretary of State with powers to deprive a naturalised person of British citizenship where, while a British citizen, the person has conducted themselves in a manner seriously prejudicial to the vital interests of the UK and it is reasonable to believe the person would be able to take up another nationality.

COUNTER-TERRORISM AND SECURITY ACT 2015

1.21 The Counter-Terrorism and Security Act 2015 introduced a regime of temporary exclusion orders to exclude from the UK persons with the right of abode who are reasonably suspected to be, or have been, involved in a terrorism-related activity outside the UK. It also enabled the police and other authorised persons to seize the passport or travel document of British citizens or foreign nationals suspected of intending to leave the UK in connection with terrorism-related activity.

IMMIGRATION ACT 2016

1.22 The Immigration Act 2016 created new sanctions on illegal working, including a new offence of illegal working and new provisions affecting employers; a new criminal offence for landlords and agents who rent to those disqualified from renting by their immigration status; a new offence of driving while in the UK unlawfully; and increased regulation of bank accounts by permitting periodic immigration checks.

1.23 It also extended the out-of-country appeal procedures introduced by the 2014 Act to all human rights appeals, so that an appeal must be brought from outside the UK where the Secretary of State has certified that doing so would not be unlawful under section 6 of the Human Rights Act 1998.

1.24 Other provisions include the amendment of the Immigration Act 1971 to allow for the cancellation of “section 3C leave” where a person has breached their conditions of leave or used deception and to delete section 3D of the Immigration Act 1971, which related to the extension of leave while an appeal against a decision to curtail or revoke leave is pending; the replacement of temporary admission with a broader concept of ‘immigration bail’, which applies both to the release of detainees and to people who are liable to detention; and significant changes to the bail regime.

THE EUROPEAN UNION (WITHDRAWAL) BILL

1.25 The European Union (Withdrawal) Bill was presented to Parliament on 13 July 2017. The Bill performs four main functions. It:

(8) repeals the European Communities Act 1972, the principal piece of domestic legislation passed by the UK Parliament that gives effect to European Union law in the UK;

(9) converts European Union law as it stands at the moment of exit into domestic law before the UK leaves the European Union;

(10) creates powers to make secondary legislation, including temporary powers to enable amendments to be made to legislation that would otherwise no longer operate appropriately once the UK has left the European Union and to implement a withdrawal agreement (subject to the prior enactment of a statute by Parliament approving the final terms of withdrawal); and

(11) maintains the current scope of devolved decision-making powers in areas currently governed by European Union law.