

Law Com No 242

Simplification of the Immigration Rules: Summary of the consultation paper

21 January 2019

THE LAW COMMISSION – HOW WE CONSULT

This is a summary of the full consultation paper, 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 the summary or consultation paper to be made available in a different format please email immigration@lawcommission.gov.uk or call 020 3334 0200.

We seek responses by 26 April 2019.

Comments may be sent:

Using an online form available at <https://www.lawcom.gov.uk/project/simplifying-the-immigration-rules/>.

However, we are happy to accept comments in other formats. If you would like to a response form in word format, do email us to request one. Please send your response:

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

OR

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.

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

Consultation Principles: The Law Commission follows the Consultation Principles set out by the Cabinet Office, which provide guidance on type and scale of consultation, duration, timing, accessibility and transparency. The Principles are available on the Cabinet Office website at: <https://www.gov.uk/government/publications/consultation-principles-guidance>.

Responses may be made public: We may publish or disclose information you provide us in response to Law Commission papers, including personal information. Additionally, we may be required to disclose the information, such as in accordance with the Freedom of Information Act 2000. If you want information that you provide to be treated as confidential please contact us first, but we cannot give an assurance that confidentiality can be maintained in all circumstances. The Law Commission will process your personal data in accordance with the General Data Protection Regulations, which came into force in May 2018. To see the Law Commission's Privacy Notice in full, please refer to our consultation paper.

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CHAPTER 1: INTRODUCTION

- 1.1 The Law Commission has been asked to review the Immigration Rules (“the Rules”) to identify principles under which they could be redrafted to make them simpler and more accessible. This is a summary of our consultation paper.
- 1.2 This project was included in the Law Commission’s 13th programme of law reform in December 2017. The sponsoring department is the Home Office.

Scope of the project

- 1.3 The paper seeks to identify the underlying causes of complexity in the Rules. It considers the structure and drafting of the Rules, the timing and frequency of amendments, the division of material between Rules and guidance, and the way in which the Rules are published.
- 1.4 It makes provisional proposals intended to pave the way for the introduction of Rules that are clear, comprehensible and organised logically and asks whether consultees agree. It also seeks the views of consultees on more open questions.
- 1.5 The paper also includes some specimen redrafting of some of the Rules, providing an illustration of some of its recommendations. We invite comments.
- 1.6 Under the terms of reference agreed, the review does not consider substantive immigration policy. It will not seek to change the legal basis on which a person may be granted leave to enter or remain in the UK.
- 1.7 **We seek the views of all interested parties by 26 April 2019.**
- 1.8 Details of how to respond are given above. The full consultation paper can be found at <https://www.lawcom.gov.uk/project/simplifying-the-immigration-rules/>.

The current state of the Immigration Rules

- 1.9 The Immigration Act 1971 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 in the United Kingdom who do not have the right of abode. These are known as the Immigration Rules.
- 1.10 As of December 2018, the Rules had reached 1,133 pages in length. They have approximately quadrupled in length in the last ten years. Statements of changes to the Rules are frequent and detailed. The Rules are widely criticised, including by senior members of the judiciary, for being poorly drafted. The structure of the Rules is confusing and the numbering system is inconsistent. There is duplication between categories of application and repetition or near-repetition within categories. In addition, there is a large volume of material which supplements and supports the Rules. The relationship between this material and the Rules is complex.

Complexity

- 1.11 Length is not synonymous with complexity. The Office of the Parliamentary Counsel has, as part of the Good Law initiative, reviewed the causes of complex legislation and identified three aspects of users' experience of legislation which contribute to complexity. Volume is only one factor. Another is quality. High quality legislation offers a coherent structure and avoids ambiguous or convoluted terms. The third factor is the user's perception of disproportionate complexity. This can be improved by efficient and user-friendly access to the legislation together with a clear steer as to how compliance can be ensured in the individual's specific circumstances.
- 1.12 We know that users of the Rules include applicants, advisers, Home Office caseworkers, the judiciary and members of Parliament.
- 1.13 It is our provisional view that the Rules should be accessible to all those affected by them, including to non-expert readers. However, even if the Rules are written primarily for a non-expert audience, it is likely that the style adopted would not differ significantly from the most suitable style for other users such as legally trained professionals.
- 1.14 We identify key principles to underpin the simplification project, including suitability for the target audience, comprehensiveness, accuracy, consistency, and capacity for presentation in digital form.
- 1.15 We ask consultees if they agree that an overhaul of the Rules is needed and with the principles we have identified. We also ask for views on whether complexity increases the number of mistakes made by applicants [CQs 1 - 4].

Impact assessment

- 1.16 The paper is accompanied by a draft impact assessment which estimates the potential costs savings provided by the simplification project over the next ten years. We ask if consultees agree with our estimate of projected savings [CQ 5].

CHAPTER 2: A SURVEY OF THE SYSTEM OF IMMIGRATION CONTROL

- 1.17 We start the paper by setting out the place of the Rules within the system of immigration control in the United Kingdom.
- 1.18 We consider briefly the historical background to immigration control which led up to the enactment of the Immigration Act 1971. The 1971 Act provides, for those who do not have the right of abode, for the regulation of entry and stay of applicants, and for their departure from the United Kingdom. It provides for rules to be laid down to regulate who will be granted leave to enter or remain, whether this should be granted on a limited or indefinite basis, and what conditions should be attached to the leave. It requires statements of the rules regulating entry and stay, or any changes in the rules, to be laid before Parliament by way of a unique form of negative resolution procedure.
- 1.19 The Rules divide applicants into different categories, including workers, students, family members and visitors. Most work and student routes are covered by the points-based system rules introduced in 2008.

- 1.20 The organisation of the Rules reflects their development over time. The structure comprises both category-specific requirements and general provisions. It is difficult to follow.
- 1.21 We provide an overview of some of the main categories of the Rules, including the tiers of the points-based system and provision for family members.
- 1.22 To set the Rules more fully in their context, we flag up that at least 16 statutes have been passed since the 1971 Act dealing wholly or partly with immigration or nationality. This is a factor contributing to the complexity of immigration law, but is outside the scope of our paper. A list of these statutes is provided at appendix 6.

CHAPTER 3: THE LEGAL STATUS AND CHARACTER OF THE IMMIGRATION RULES

- 1.23 Before looking at the current complexity of the Rules, we consider the unique legal status of the Rules and what they are required to contain.
- 1.24 There has been judicial debate and disagreement as to whether the Rules are a form of delegated legislation. In practice, they do not equate exactly to delegated legislation. They are a hybrid of administrative policy and legal rules. We ask consultees whether the unique status of the Rules causes difficulties to applicants [CQ 6].
- 1.25 The relationship between the Rules and other types of instructions given by the Secretary of State has come under judicial scrutiny. The decision of the Supreme Court in *R (Alvi) v Secretary of State for the Home Department*¹ determined that any requirement which a migrant must satisfy as a condition of being granted leave must be contained within the Rules. Under section 3(2) of the 1971 Act, it must accordingly be laid before Parliament.
- 1.26 In contrast, instructions or guidance to caseworkers to assist with the process of applications which are not determinative of the application do not have the character of a Rule and do not have to be laid before Parliament.
- 1.27 A number of decisions following *Alvi* applied its test of what constitutes a Rule, and drew further distinctions. These included, in *R (New London College Limited) v Secretary of State for the Home Department*,² a finding that requirements to be met by sponsors fell within the wider category of ancillary and incidental powers used in the administration of the immigration system. They did not fall within section 3(2) of the 1971 Act and did not need to be laid before Parliament.
- 1.28 The division between a concessionary policy and a Rule has also been considered. The Supreme Court found in *R (Munir) v Secretary of State for the Home Department*³ that the 1971 Act conferred a discretion on the Secretary of State to grant leave to enter or remain even where it would not be granted under the Rules. Each concessionary policy needs to be reviewed to consider the degree of flexibility with which it was to be applied. The less flexibility there is in a policy, the more likely it is that it needs to be incorporated into the Rules.

¹ [2012] UKSC 33, [2012] 1 WLR 2208.

² [2013] UKSC 51, [2013] 1 WLR 2358.

³ [2012] UKSC 32, [2012] 1 WLR 2192.

CHAPTER 4: INSTRUCTIONS, GUIDANCE AND PRESCRIBED FORMS

- 1.29 We also need to understand the relationship between the Rules and underlying guidance. There are several hundred individual guidance documents which accompany the Rules. This is in itself a source of complexity. Some guidance is publicly available and provides an important source of information for applicants and their advisors. Some is unpublished.
- 1.30 The Supreme Court in *Mandalia v Secretary of State for the Home Department*⁴ considered guidance permitting caseworkers a degree of flexibility in dealing with minor errors and omissions in applications. The court applied 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.
- 1.31 In *Lumba v Secretary of State for the Home Department*⁵ the Supreme Court considered the extent to which decisions-makers are required to make decisions on the basis of published rather than unpublished guidance. It identified a principle that where a public authority relies on unpublished guidance, it must be consistent with published policy. It also relied on the principle that a policy 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.
- 1.32 Under the 1971 Act, guidance must not be inconsistent with the Rules. It cannot be used to construe the Rules more harshly, but it can include concessions which are more favourable than a Rule.
- 1.33 The interaction between Rules and guidance is complex and has given rise to confusion. It can be difficult for users to keep up to date with changes and to know which version of a guidance document applies.
- 1.34 Consultees' views are requested on the extent to which guidance is helpfully presented, and as to areas where the existing guidance contradicts the Rules [CQ's 7 - 8].
- 1.35 Application forms are a further form of external material which can have legal effect. An application will be rejected as invalid if the wrong form is used. An increasing number of applications are now made online.
- 1.36 Consultees' views are requested in relation to difficulties experienced with both hard copy and online applications [CQ 9].

CHAPTER 5: RECENT DRIVERS OF LENGTH AND COMPLEXITY

- 1.37 Our analysis of the reasons for the complexity of the Rules begins here.
- 1.38 The introduction of the points-based system in 2008 signalled a major change in approach to the Rules. A key policy 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

⁴ [2015] UKSC 59, [2015] 1 WLR 4546.

⁵ [2011] UKSC 12, [2011] 2 WLR 671.

became more detailed and prescriptive. This approach necessarily meant that the Rules grew longer, and in some places more complex.

- 1.39 We consider the impact of the new prescriptive approach by comparing a provision contained in the new points-based system with the equivalent provision in an earlier version of the Rules.
- 1.40 Case law culminating in the *Alvi* decision⁶ has also led to a significant increase in the volume of 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. In the six months following *Alvi*, there were four statements of changes which included the transfer of further material into the Rules. The transfer of previously external material into the Rules continued thereafter.
- 1.41 The most significant changes made to the Rules in terms of volume have been the Appendices which were added in response to *Alvi*.
- 1.42 A further factor impacting on the length 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. 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.
- 1.43 Graphs set out in the chapter illustrate the significance of the *Alvi* decision in generating frequent Rule changes and longer Rules.
- 1.44 While length is not in itself necessarily a cause of complexity, in many cases the way in which external material has been grafted onto the Rules has made them complicated. The volume and frequency of the statements of changes contributes to the complexity of the Rules. Coordinating rule changes is operationally complicated and 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.
- 1.45 In addition, the prescriptive approach itself has created a need for frequent changes to points of detail, notwithstanding that there is little or no change in the policy underlying the Rules. We analyse changes to Appendix FM-SE, which sets out the evidential requirements for family member applications, from 2012 to 2018. These illustrate the tendency of the prescriptive approach to generate an increased number of rule changes. Changes are required as ambiguities or gaps in the provisions are identified, or to keep the Rules up to date.
- 1.46 We ask for consultees' views on whether they agree with the analysis set out in the chapter of recent causes of increased length and complexity and of the way in which prescription can itself generate complexity. We also ask for further examples of Rules where the immigration objective has stayed the same, but details have changed often [CQs 10 - 12].

⁶ *R (Alvi) v Secretary of State for the Home Department* [2012] UKSC 33, [2012] 1 WLR 2208.

CHAPTER 6: A LESS PRESCRIPTIVE APPROACH TO THE RULES?

- 1.47 As a possible aspect of reform, we consider whether a less prescriptive approach to the drafting of the Rules could be adopted to make them simpler and shorter. Rules expressed in more general terms, supplemented by non-exhaustive or illustrative guidance, would in our view remain compatible with the decision in *Alvi*.
- 1.48 In order to explore the possibilities of a less prescriptive approach, we contrast one category of the current points-based system, the Tier One (Entrepreneur) category, with the same category in the pre-2008 Immigration Rules, and with a broadly equivalent route in New Zealand. The pre-2008 Rules provided far less evidential prescription than the current system, with decisions being made by a specialist team. The New Zealand Operational Manual provides for many decisions to be taken on a discretionary basis. It provides, for example, for the applicant to demonstrate to the satisfaction of a 'business immigration specialist' that a requirement is met. Evidential requirements are short, flexible and non-exhaustive.
- 1.49 We also consider two categories within the current Rules which already adopt a less prescriptive approach. These are the Appendix EU (EU citizens and family members) and Appendix V (Visitors) categories. Appendix EU relies in some respects on discretionary evidential rules, and on the use of cross-departmental data to reduce the amount of evidence required from the applicant. Appendix V features a less prescriptive approach in relation to substantive rather than evidential matters. It includes a requirement that the applicant does not intend to work in the UK, but does not exhaustively define 'work'. Caseworkers are given discretion when an unanticipated scenario arises.
- 1.50 There are possible benefits to both applicants and the Secretary of State in adopting a less prescriptive approach. Caseworkers could adopt a more 'common sense' approach to decision-making. Rules would be shorter and simpler to navigate. Case workers might also experience a higher level of job satisfaction in being entrusted with a wider discretion. There may be less need for Rule changes in the absence of policy change.
- 1.51 There is a risk, however, of a loss of certainty, consistency, transparency and efficiency. Certainty may be a paramount concern for the applicant, particularly in non-human rights cases which no longer attract a right of appeal, and in light of the wider consequences for the applicant of an initial refusal decision. Lack of certainty may also create a risk of more litigation over the meaning and effect of the Rules. The exercise of discretion itself can be challenged.
- 1.52 There would also be transitional costs for the Home Office in altering internal processes and training caseworkers.
- 1.53 We seek consultees' views on how well discretionary elements within the Rules are working, and whether a less prescriptive approach to evidentiary matters is desirable [CQs 13 - 19].
- 1.54 We also consider whether there are particular areas or types of Rules that might benefit from less prescription. The choice is not solely between the polarised positions of a highly prescriptive approach and the bestowal of an unrestricted discretion on the decision-maker. There are intermediate positions which permit evidence to be

specified where policy requires that only that specific evidence will suffice. We also consider policies which have been operated by the Home Office over recent years to provide caseworkers with flexibility in deciding whether to request evidence missing from an application or provided in the wrong format.

CHAPTER 7: ORGANISATION OF THE IMMIGRATION RULES – THE CONTRASTING APPROACHES CURRENTLY FOLLOWED

- 1.55 Whether or not a decision is made to adopt a less prescriptive approach to drafting, reform of the organisation of the Rules is required.
- 1.56 We identify three contrasting approaches that have been adopted to the structuring of the Rules at various stages in their development. The original “common provisions” approach, exemplified by Parts 1 (General provisions) and 9 (Grounds for refusal), involves Parts which contain provisions which apply to multiple categories of applicants. The “multiple parts” approach, exemplified in the Points-based scheme, spreads requirements applying to a particular category of applicant across various Parts and/or Appendices. The “booklet” approach, originally adopted in Appendix FM and subsequently in Appendices Armed Forces and V (Visitors), aims for each category-specific Part of the Rules to contain every requirement which the specific category of applicant must satisfy.
- 1.57 While we do not find anything of value in the multiple parts approach, we see advantages and disadvantages in the common provisions and booklet approaches.
- 1.58 The common provisions approach expects users to consult the common provisions as well as those specific to their category of application. The booklet approach seeks to simplify the users’ task by requiring them to access only a single part of the Rules. For this reason, it necessarily involves the duplication of provisions of general application across each booklet. This generates problems due to the use of wording which is not identical. We identify examples of inconsistencies. In some cases, differing wording is used to achieve the same effect. In others, it is possible that a policy distinction is intended.
- 1.59 Analysis of the Rules shows the distinction between the two approaches can blur in practice. Some of the common provisions apply universally or nearly so. Others are modified in their application to particular routes. Some apply only to specific groups of migrants, for example by reference to nationality, irrespective of the route of application.

CHAPTER 8: RESTRUCTURING THE RULES: WHICH APPROACH TO FOLLOW

- 1.60 We provide a provisional reclassification of the Rules as a first step towards more logical organisation. This is presented as a division of the subject-matter into types of material.
- 1.61 First, introductory parts explain how to use the Rules and provide general background information. Secondly, provisions of more or less general application are identified and grouped by subject matter. They are distinguished from categories of “migration route” into which applicants may be divided according to the purpose of their proposed entry or stay. We suggest that all eligibility and evidential requirements applying to a

specific category of applicant should appear in one place. Appendices should contain only subordinate narrative or lists and not bodies of rules.

- 1.62 Appendix 5 to the consultation paper provides a “table of destinations” to map in more detail the allocation of subject-matter from the current Rules to the various parts of our proposed new structure.
- 1.63 Before this reallocation of material can occur, we provisionally propose that an audit of overlapping provisions be undertaken. Where inconsistencies are identified, a policy decision should be taken as to whether a difference in effect is desirable. If not, we suggest that the wording should be standardised to reduce the possibilities of confusion. Once this task is completed, it will be possible to see how many common provisions remain which are genuinely common to all categories, and how many require category-specific modification.
- 1.64 This task will help to inform the decision as to which approach should be adopted for the presentation of the Rules. This needs to be determined both for the presentation of the Rules in the form of a paper statement laid in Parliament and as accessed by the typical user, which we believe is mainly online. We identify three possibilities: a statement of a single set of Rules is both laid before Parliament and presented online; statements in booklet form are laid in Parliament and made available online; or a statement of a single set of Rules is laid in Parliament and reworked editorially to produce booklets made available online.
- 1.65 We consider the advantages and disadvantages of each of these approaches. The decision as to which is preferable will depend in part on the conclusions reached following our proposed audit as to the amount that common provisions require category-specific modification.
- 1.66 A further decision to be made is how to position and present common definitions. The existing approach is inconsistent and definitions are arranged in no particular order. We consider whether all definitions should be placed in one section, or whether a common section should include only widely used terms, with category-specific definitions confined to the particular category in which they arise.
- 1.67 A system which identifies a definition with a symbol would help the user to refer to the definitions section. Technology could be used online to provide hyperlinks or hover boxes.
- 1.68 We ask for consultees’ views on each step of our analysis and on our proposals [CQs 20 - 26].

CHAPTER 9: IDENTIFICATION AND ORGANISATION OF MATERIAL WITHIN PARTS

- 1.69 Restructuring the Rules would resolve some issues of complexity. But the internal presentation and drafting of the material within each Part also requires revision.
- 1.70 Complexity could be reduced by the adoption of a new approach to the titles and internal organisation of Parts of the Rules. The titles and sub-titles used in the online presentation of the Rules can be confusing. We propose a consistent approach to labelling which employs short one-line titles for each Part and similarly short subheadings for the divisions of Parts. We also propose that they should give as full

an explanation of the contents that follow as possible, consistently with keeping them reasonably short, and should avoid initials and acronyms. We envisage that the new system of titles and sub-headings would be used when implementing our proposed structural changes to the Rules.

- 1.71 We ask for consultees' views on the principles we propose, and as to the extent to which subheadings should be used [CQ's 27 - 28].
- 1.72 There are a number of distinct aspects of internal organisation which can mitigate complexity. We consider in turn systems of overviews and tables of contents, numbering, the way in which requirements are ordered, and the location of definitions specific to categories.
- 1.73 Overviews can be helpful, but there is a risk that they simply add to repetition, or that they may be given unintended effect by the courts. This can be avoided by ensuring that the overview is accurate and makes clear that it is intended merely as a general description of the content. We consider whether a table of contents at the beginning of an individual Part would be a helpful addition or alternative to an overview.
- 1.74 Consultees' views are sought as to the desirability of overviews and tables of contents and their preferences between the two [CQ's 29 - 30].
- 1.75 The current numbering system used in the Rules is confusing and inconsistent. It has been frequently criticised. The numbering runs from the beginning to the end of the Rules. It is not possible to identify from the number the Part of the Rules into which a paragraph falls. Some Appendices use a numerical system, while others use lettering followed by numbers, or use letters only. Initials are used in some instances to identify subject matter. These are intended to assist by indicating subject matter, but this may not be clear to users who are unfamiliar with the Rules.
- 1.76 We seek views on a new numbering system for the Rules. This would number paragraphs in sequence and remove letters from the numbering system. A three-level numbering system (8.1.1, 8.1.2 and so on) would separate different sections within a Part and reduce the disruption caused by the insertion of additional sections or paragraphs.
- 1.77 Similarly, a uniform system is needed for Appendices. We provisionally propose that they be given numbers and that the use of initials be abandoned.
- 1.78 We think that the use of letters cannot be avoided when additional Rules are inserted into existing text. We suggest a numbering system based on standard legislative drafting practice for future insertions into the Rules.
- 1.79 We seek consultees' views on the numbering system to be adopted for the Rules and Appendices, on our proposals for subsequent amendments, and on whether the current Rules should be renumbered as an interim measure. We also ask whether this is an exercise which should be undertaken at intervals to resolve large numbers of inserted amendments [CQs 31 - 35].
- 1.80 The location and ordering of eligibility requirements within a Part is important for clarity. We provide examples of convoluted or scattered presentation in the current Rules and highlight the difficulties which these pose to the user. We provide specimen

re-drafting in appendices 3 and 4 to our consultation paper as an example of a more coherent approach to the ordering of sections of the Rules.

CHAPTER 10: DRAFTING STYLE

- 1.81 Methods of expression within the Rules have an impact on clarity.
- 1.82 We consider the need for a consistent approach to the way in which definitions are expressed. In particular, some definitions within the Rules contain substantive eligibility requirements. This creates a risk that users may overlook the requirement. We provisionally propose that definitions should be used only to clarify the meaning of terms and should not be used to import requirements. We ask if consultees agree [CQ 36].
- 1.83 The practice of cross-referring extensively across provisions is another generator of complexity. The user is led through a labyrinth of provisions to locate requirements. Some of the cross-referencing is unnecessary and inconsistent. We provisionally propose that, where possible, paragraphs should be self-standing. Where a cross-reference is necessary, clear signposting should be adopted.
- 1.84 In other cases, reference is made to a source of law outside the Rules. We think that this can be useful in drawing attention to additional requirements that need to be complied with. Where the reference is to an external source, it could be helpful to signpost these more effectively. This is an area in which technology could be used to ease navigation with links or sidebars. We seek views on our proposals for self-contained provisions and signposting [CQs 37 - 38].
- 1.85 Repetition within a Part of the Rules increases length and can be confusing for the user. An example of this is where separate lists of largely overlapping requirements are set out for applications for entry clearance, limited leave and indefinite leave. This lengthens the text, but provides readers with a single list applicable to each form of leave. Our proposed re-draft of Part 9 (grounds of refusal) in appendix 3 to the paper attempts to avoid this repetition. We seek the views of consultees as to whether such repetition within Parts should be eliminated where possible, or whether it is beneficial [CQ 39].
- 1.86 We conclude with a draft of a proposed internal guidance document on drafting the Rules. This covers general drafting style, formatting, numbering, titles, overviews and contents, cross-referencing and definitions. Our intention is to provide a benchmark to assist in establishing and maintaining clear drafting in the future. We ask whether consultees agree with its content or have alternative suggestions [CQ 40].

CHAPTER 11: OUR SPECIMEN REDRAFTING WORK

- 1.87 We have attempted a redraft of Part 9 (Grounds for refusal) and part of Appendix FM (Family members) as an illustration of our provisional proposals for simplification of the Rules. The part of Appendix FM that we have selected covers the rules for partners as one category of family member.
- 1.88 The original texts appear at appendices 1 and 2 to the paper. The redrafts are presented in appendices 3 and 4.
- 1.89 We seek consultees' comments on the redrafts [CQs 41 - 42].

CHAPTER 12: KEEPING THE IMMIGRATION RULES UNDER REVIEW

- 1.90 Although there is provision in the Immigration Act 1971 for Parliamentary oversight of the Rules by way of a unique form of negative resolution procedure, the mechanism it provides does not in our view provide a means of controlling complexity in the Rules and of maintaining a simplified structure and content and clarity of drafting.
- 1.91 There is no legal duty to consult on the Rules. The government may decide to consult, and there is evidence that informal consultation and practitioner feedback have led to improvements in the way that Rules work in practice.
- 1.92 Over time there is a risk that the benefits of a simplification project could be lost. We seek views on whether a review mechanism such as an informal advisory committee could help to maintain simplicity and accessibility as the Rules change over time. One matter for consideration, if a policy decision is made to adopt a less prescriptive approach to the Rules, or to parts of the Rules, would be the balance between the Rules and underpinning guidance.
- 1.93 We seek views on the benefits of informal consultation and periodic review, and whether this would help to reduce complexity [CQ's 43 - 44].

CHAPTER 13: UPDATING AND ARCHIVING THE IMMIGRATION RULES

- 1.94 Statements of changes to the Rules generate a range of difficulties. The way in which they are published can make the effect of changes difficult to understand. Explanatory memoranda help, but can be quite generalised. We seek views on how amendments could be made easier to understand, for example by the provision of tracked versions of the Rules to show the changes, or by replacing whole paragraphs rather than individual words [CQ 45].
- 1.95 Another difficult aspect is determining when a particular Rule change takes effect. There may be a number of implementation dates. Some changes may apply to all applications submitted after a specified date, and others to decisions taken after that date. In some cases, transitional provisions are introduced. With no consistent means of signalling dates of entry into force or expiry of Rules, it can be difficult to discern which version of a Rule applies to a particular application. The difficulties of transitional arrangements in particular have given rise to a number of decisions of the senior courts. We consider examples.
- 1.96 We consider whether it would assist if dates of entry into force or expiry were included in the Rules. In New Zealand, for example, the online Operational Manual includes, at the bottom of each page, the most recent date that the particular set of requirements on the page changed. A list of links to previous versions of that page is also provided.
- 1.97 We seek views on the best way to identify the temporal application of statements of changes to the rules [CQ 46].
- 1.98 Previous consolidated versions of the Rules dating back to 9 July 2012 are now archived and made available via a link on the GOV.UK Immigration Rules page. We seek views on whether the system could be improved, in particular by the provision of

a search facility, or by providing a link to previous versions in each particular Rule or Part [CQs 47 - 48].

- 1.99 Finally, we consider the frequency of changes and ask whether it would be preferable, save in urgent cases, to confine statements of changes of the Rules to two common commencement dates a year [CQs 49 - 50].

CHAPTER 14: HOW CAN TECHNOLOGY BE USED TO IMPROVE THE APPLICANT'S EXPERIENCE OF THE IMMIGRATION RULES?

- 1.100 As the Rules are increasingly viewed online, any proposals for simplification need to consider online presentation. We also need to consider the potential for a more integrated online application system arising from 'smarter' digital platforms.
- 1.101 The overall length of the Rules is less of an issue online where an initial display of a route map can guide users to the Parts relevant to them. Links or sidebars could be used to help users navigate the appropriate eligibility requirements. Hover boxes could be used where appropriate, for example to provide definitions, to remove the need to cross- refer.
- 1.102 It is possible that, with the use of hyperlinks in the online version of the Rules, the choice of a booklet or a common provisions approach to the structuring of the Rules could have little impact in practice. We seek consultees' views [CQ 51].
- 1.103 Technology could also assist with the interface between the Rules and guidance. This might be particularly useful if the Rules are re-drafted in a way which makes them less prescriptive and reliant on non-exhaustive lists of examples contained in guidance.
- 1.104 We seek views on whether clearer linking of guidance to the relevant Rules would be useful [CQ 52].
- 1.105 Online application forms are also becoming the norm. There is potential to use data analysis and insights to create more user-friendly online processes. These could guide the applicant to the relevant Rules or guidance over the course of the online application. Changes have already been made to the Rules to allow documents to be uploaded at appointment centres rather than requiring applicants to submit originals.
- 1.106 In the longer term, interactive tools may be developed which guide the applicant more accurately to the information needed to assess eligibility requirements. A tool could sequence the exact set of Rules which apply to a particular applicant in response to a series of questions. The applicant could also be prompted as to the necessary evidence to be provided. The system could in effect generate a 'mini-booklet' tailored to the needs of the applicant.
- 1.107 The system could also alert the applicant via the online application platform if something is missing or incomplete. This would avoid the submission of a defective application.
- 1.108 Technology can also be used to make it possible for decision-makers to verify information more flexibly.

1.109 We also acknowledge that new technology brings risks, for example of introducing a new form of rigidity.

1.110 Consultees are asked for their views on current online application processes and appointment centres, and whether they agree with the areas we have identified where modern technology could aid simplification. We also ask whether there are other possible approaches which we have not considered [CQs 53 - 54].

CHAPTER 15: CONSULTATION QUESTIONS

1.111 Chapter 15 provides a list of all the questions in the consultation paper. The list is also reproduced in full below. The paragraph references are to the consultation paper.

Consultation Question 1.

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

Paragraph 1.43

Consultation Question 2.

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

Paragraph 1.44

Consultation Question 3.

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

Do consultees agree?

Paragraph 1.45

Consultation Question 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.

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.**

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.**

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

Paragraph 4.29**Consultation Question 8.**

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

Paragraph 4.30**Consultation Question 9.**

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

Paragraph 4.46**Consultation Question 10.**

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

Paragraph 5.53

Consultation Question 11.

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

Paragraph 5.54**Consultation Question 12.**

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

Paragraph 5.55**Consultation Question 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.**

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.**

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.**

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.

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.**

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.**

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.**

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.**

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.

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.**

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

Paragraph 8.36**Consultation Question 24.**

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

Paragraph 8.37**Consultation Question 25.**

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

Paragraph 8.38**Consultation Question 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.

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.**

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.**

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.**

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

Paragraph 9.24

Consultation Question 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.**

We provisionally propose that Appendices to the Immigration Rules are numbered in a numerical sequence.

Do consultees agree?

Paragraph 9.40

Consultation Question 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.

Should the current Immigration Rules be renumbered as an interim measure?

Paragraph 9.42

Consultation Question 35.

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

Paragraph 9.43**Consultation Question 36.**

We provisionally propose that definitions should not be used in the Immigration Rules as a vehicle for importing requirements.

Do consultees agree?

Paragraph 10.11**Consultation Question 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.**

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.

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.**

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.**

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.**

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.**

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.**

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.

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.**

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.**

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.**

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.**

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.

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.**

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.**

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

Paragraph 14.10**Consultation Question 53.**

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

Paragraph 14.15**Consultation Question 54.**

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

Paragraph 14.23