

2023 UNIT SPECIFICATION

Title:	(Unit 8) Immigration Law
Level	6
Credit Value:	15

Learning outcomes	Assessment criteria	Knowledge, understanding and skills
The learner will:	The learner can:	
<p>1. Understand the framework of immigration control in the UK</p>	<p>1.1 Identify the sources of immigration law</p>	<p>1.1 In particular,</p> <ul style="list-style-type: none"> • Immigration Act 1971 • Nationality, Immigration and Asylum Act 2002 • Immigration, Asylum and Nationality Act 2006 • UK Borders Act 2007 • Borders, Citizenship and Immigration Act 2009 • Immigration Act 2014 • immigration rules in HC 395 and linked appendices • Home Office policy documents (IDIs, APIs etc). • Knowledge of Immigration Act 2016 including offence of illegal working inserted into the Immigration Act 1971 at s.24B.

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	<p>1.2 Explain the exclusionary nature of immigration control</p> <p>1.3 Analyse the operation of immigration control</p>	<ul style="list-style-type: none"> • Knowledge of amendments made by Part 2 Immigration Act 2016, preventing illegal migrants accessing services and Part 3 Immigration Act introducing measures to enforce immigration laws. Introduction of a new electronic entry clearance visa. • Nationality and Borders Act 2022 <p>1.2 Right of abode;</p> <ul style="list-style-type: none"> • concepts of subject to immigration control, entry clearance, leave to enter and remain; • the significance of the common travel area; • access to public funds and housing by those seeking to live in the UK e.g “No recourse to public funds” conditions attached to leave; • application and nature of immigration rules. <p>1.3 Legal basis:</p> <ul style="list-style-type: none"> • Immigration Act 1971; • operation of entry clearance, leave to enter, leave to remain; • personnel of immigration control; • enforcement of immigration control through civil and criminal law including the main offences and civil penalties for employers. New offence at s.40 Nationality and Borders Act 2022 of illegally arriving. Changes to s.31 Immigration and Asylum Act 1999 and interpretation of Article 31 Refugee Convention • the impact of Equality Act 2010.
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	<p>1.4 Analyse the role of discretion in immigration law</p> <p>1.5 Apply an understanding of the framework of immigration control to a given situation</p> <p>1.6 Critically evaluate a given issue or situation to predict probable legal implications</p>	<ul style="list-style-type: none"> • Immigration Act 2014 - right to rent scheme, 30-day travel visa for visa of more than 6 months, introduction of Immigration Health Surcharge (IHS) including circumstances in which this can be waived. • Awareness that leave under s.3C of the Immigration Act 1971 may be cancelled under the Immigration Act 2016 s.3C(3A). <p>1.4 Discretion to allow entry and leave to remain outside the rules;</p> <ul style="list-style-type: none"> • key Home Office policies • legitimate expectation; • unlawful detention: common law fairness. <p>1.5 Application of understanding to a complex scenario.</p> <ul style="list-style-type: none"> • Understanding how to make an application for entry clearance/leave to remain, including online applications • Understanding how to make an application for a fee waiver. <p>1.6 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate.</p>
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<p>2. Understand the routes to admission for the purposes of employment or self-employment</p>	<p>2.1 Classify the different routes to employment and self-employment</p> <p>2.2 Describe the features of and criteria for the principal categories for entry for employment and self-employment</p>	<p>2.1 An explanation of the rationale for work-based routes and a clear differentiation of the categories within it.</p> <p>2.2 Categories of work based routes – highly skilled (global talent, start-up visa and innovator visa) - understanding that Investor route is currently suspended to new applicants but those on the route can extend and settle; Removal of new applicants in the entrepreneur and graduate entrepreneur categories and transitional arrangements for immigrants with extant leave in these categories)</p> <ul style="list-style-type: none"> • basis of award of points under in work categories; • basis of award of points in the Skilled Worker category, requirement to be sponsored, applicability of the ‘resident labour market test’; tradeable points in this category, Health and Care visas, special requirements for nurses and midwives • exceptions to the ‘resident labour market test’. • Criteria for entry under Temporary Worker categories (temporary workers: creative and sporting, charity workers, religious, government authorised exchange and international agreement; youth mobility scheme and Seasonal Worker visas) – Additional restrictions on religious and charity workers
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	<p>2.3 Explain the rights of family members of economic migrants</p> <p>2.4 Summarise the stages an economic migrant goes through on the road to settlement</p> <p>2.5 Analyse the recent and forthcoming changes to this area of law</p>	<ul style="list-style-type: none"> • Minimum earning threshold for Tier 2 settlement, including exceptions in the immigration rules and related appendices <p>2.3 Right to join principal migrant and relevant criteria in each category;</p> <ul style="list-style-type: none"> • rules that are applied (eg: maintenance funds); • right to work once in UK. <p>2.4 Leave granted in stages, different periods of leave required for settlement dependent on Tier</p> <ul style="list-style-type: none"> • application fees; • knowledge of life in the UK. • Absences requirement leading to settlement extended to dependants. • Knowledge of which routes lead to settlement and which are temporary in nature. <p>2.5 Frequent modification to work-based routes;</p> <ul style="list-style-type: none"> • strict and detailed requirements with no built in evidential flexibility; <u>Shahzad</u> [2012] UKUT 81 (IAC), <u>Alam v SSHD</u> [2012] EWCA Civ 960, <u>Mudiyanselage v SSHD</u> [2018] EWCA Civ 65, <u>Harpreet Singh v SSHD</u> [2018] EWCA Civ 2861 • awareness of previous routes to employment/self-employment and how to switch into current categories; • Genuineness.
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	<p>2.6 Apply an understanding of the routes to admission to a given situation</p> <p>2.7 Critically evaluate a given issue or situation to predict probable legal implications</p>	<ul style="list-style-type: none"> • Specific additional arrangements for Ukrainian nationals to switch or extend their presence in the UK as a result of the war in Ukraine. • Global Business Mobility routes – currently: Senior or Specialist Worker, Graduate Trainee, UK Expansion Worker, Service Supplier and Secondment Worker. • Graduate visa route • High Potential Individual visa route • Scale Up route • Impact of Appendix Coninuous Residence where is applies. <p>2.6 Application of understanding to a complex scenario.</p> <ul style="list-style-type: none"> • Understanding how to make an application for employment and self-employment. <p>2.7 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate.</p>
<p>3. Understand the rules on the admission of family members</p>	<p>3.1 Identify the rules for entry, stay and settlement for spouses and partners, children and other relatives</p>	<p>3.1 Knowledge and understanding of requirements for leave to enter and remain in Appendix FM covering spouses, civil partners, unmarried partners, fiancé(e)s/proposed civil partners;</p> <ul style="list-style-type: none"> • probationary period of leave; • domestic violence and bereaved spouse rules; • children; adopted children; dependent relatives;

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	<p>3.2 Explain the application process from visa to settlement</p>	<ul style="list-style-type: none"> • knowledge of the rules includes the criteria/qualifications for entry under these rules, the rules on entry clearance and switching into these categories within the UK. • Knowledge of definition of a partner in GEN 1.2 and understanding of the general, suitability and eligibility (including relationship, English language and financial) requirements for both leave to enter, limited leave to remain and indefinite leave to remain. • Knowledge and understanding of requirements to produce relevant documentation under Appendix FM-SE. • Knowledge and understanding of the requirements of the 5 year and 10-year routes to settlement under Appendix FM. <p>3.2 Entry clearance;</p> <ul style="list-style-type: none"> • leave to enter; • periods of leave granted; • leave to remain; • settlement; • fees payable throughout; • knowledge of language and life (KoLL) • Secure English Language Test (SELT) for citizenship and settlement. • New appendices in relation to settlement on the 10 year route for family members - Appendix Settlement Family Life and Appendix Relationship with Partner. New continuous residence requirement. Ability
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	<p>3.3 Analyse the rules for maintenance and accommodation without recourse to public funds</p>	<p>to combine leave undertaken on related routes to reach the 10-year period for settlement.</p> <p>3.3 Understanding of income threshold in Appendix FM for partners of £18,600 per couple, an extra £3,800 for first non-British child and an extra £2,400 per extra child (E-ECP 3.1);</p> <ul style="list-style-type: none"> • sources of relevant income under E-ECP 3.2 (eg: only income of partner in UK for entry clearance application, no allowance for third party support). <u>MM and Others</u> (2014) CA upholding minimum income requirement at £18,600 per couple and finding no Article 8 breach. Supreme Court ruling on minimum income requirement and Appendix FM rules in R (on the application of <u>MM (Lebanon)</u>) (<u>Appellant</u>) v <u>Secretary of State for the Home Department</u> (Respondent). • Understanding of maintenance and accommodation requirements that apply to parents of British children exercising rights of access. • Understanding requirements of Appendix FM-SE regarding documentation for evidencing income; eg: section A1 Appendix FM-SE on permitted sources of income and section 2 on documentation required for salaried employment. • Understand that accommodation must be ‘adequate’, eg: at least one room for
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	<p>3.4 Apply an understanding of the immigration rules for family members to a given situation</p> <p>3.5 Critically evaluate a given issue or situation to predict probable legal implications</p>	<p>exclusive use of a couple, not overcrowded and not contravening public health regulations (E-ECP 3.4).</p> <ul style="list-style-type: none"> • Understanding of Section EX and provisions relating to exceptional circumstances in Appendix FM. <p>3.4 Application of understanding to a complex scenario.</p> <ul style="list-style-type: none"> • A clear understanding of how an application for a family-based visa can be made. • Applying the financial requirement under Appendix FM to a given scenario. <p>3.5 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate.</p>
<p>4. Understand the other key UK immigration categories and rules</p>	<p>4.1 Identify the rules for students and other young people and their families</p>	<p>4.1 The requirements in Appendix Student relating to students and their families and the Youth Mobility Scheme.</p> <ul style="list-style-type: none"> • Rules on switching • Requirements of CAS and obligations of sponsoring institution • Maintenance and accommodation requirements, course requirements, English language ability and genuineness/intention to study - <u>R (Global Vision College Ltd) v SSHD</u> [2014] EWCA Cov 659, <u>R (on the application of Mushtaq) v ECO Islamabad, Pakistan</u> [2015] UKUT 00224, <u>R (on the application of Hazret Kose) v SSHD</u> [2011] EWHC 5294 (admin)

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	<p>4.2 Explain the rules for the different categories of visitor</p> <p>4.3 Explain the rules for returning residents</p> <p>4.4 Analyse the general grounds for refusal</p> <p>4.5 Apply an understanding of these other key UK immigration categories and rules to a given situation</p> <p>4.6 Critically evaluate a given issue or situation to predict probable legal implications</p>	<p>4.2 Appendix V covering standard visitors, transit, marriage/civil partnership visitors, permitted paid engagement visitor;</p> <ul style="list-style-type: none"> • an understanding of rules and conditions in each category of visitor. • Genuineness and intention to return - <u>Mostafa (Article 8 in entry clearance) [2015] UKUT 00112 (IAC), Kaur (visit appeals; Article 8) [2015] UKUT 00487 (IAC)</u> <p>4.3 Knowledge of rules and policy on returning residents, i.e.: immigration rules 18 to 20. UK Ancestry visas.</p> <p>4.4 Covering immigration rules 320 to 323C: mandatory and discretionary refusals in Part 9 Immigration Rules and parallel criteria in Appendix FM and elsewhere;</p> <ul style="list-style-type: none"> • refusal of leave to those with entry clearance by immigration officers. <p>4.5 Application of understanding to a complex scenario.</p> <ul style="list-style-type: none"> • A clear understanding of how an application can be made. <p>4.6 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate.</p>
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<p>5. Understand modern British nationality law</p>	<p>5.1 Identify the different forms of British nationality</p> <p>5.2 Differentiate between the different forms of British nationality</p> <p>5.3 Explain acquisition of British citizenship by birth and by descent</p>	<p>5.1 British citizens;</p> <ul style="list-style-type: none"> • British Overseas Territories Citizens; • British Overseas Citizens; • British subjects; • British Protected Persons • British Nationals Overseas – with particular reference to British National (Overseas) visas for person from Hong Kong. <p>5.2 Right of abode;</p> <ul style="list-style-type: none"> • benefits to BOTC citizens under British Overseas Territories Act 2002; • rules on transmission to next generation. • s.1 –s.6 Nationality and Borders Act in remedying past gender discrimination and unfairness in nationality law provision. <p>5.3 Post-British Nationality Act 1981 transmission by birth and by descent; definition of “father” – s.65 Immigration Act 2016, British Nationality (proof of paternity regulations) 2006 and 2015.</p> <ul style="list-style-type: none"> • Windrush scheme applications. • s.9 Nationality and Borders Act – ability for SSHD to waive the requirement to have been present in the UK on the date 5 years prior to the date of application – finding of <u>R (Vanriel & another) v SSHD EWHC [2021]</u> – particularly relevant to Windrush scandal cases.
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	<p>5.4 Explain acquisition of British nationality by registration (adults and minors) and naturalisation</p> <p>5.5 Analyse the application of the provisions on deprivation and renunciation of citizenship</p>	<p>5.4 Requirements for registration of adults and minors;</p> <ul style="list-style-type: none"> • Criteria for registration under s.1(3) and s.1(4) BNA 1981 • Criteria for registration by discretion under s.3(1) BNA 1981 • New discretionary route to registration as an adult under s.8 Nationality and Borders Act to remedy historic unfairness • Good character requirements - <u>TN (Afghanistan) v SSHD</u>[2015] UKSC 40, <u>R (Hiri) v SSHD</u>[2014] EWHC 254 (Admin), <u>R (DC) v SSHD</u>[2018] EWHC 399 (Admin) • <u>R (Williams) v SSHD</u> [2017] EWCA Civ98 – SSHD is entitled to refuse to extend fee waivers to nationality cases. Newly introduced “affordability fee waiver” for registration applications for under 18s. <p>Requirements for naturalisation</p> <ul style="list-style-type: none"> • criteria for naturalisation under s.6(1) and s.6(2) BNA 1981; • Good character requirements – see above caselaw • Knowledge of language and life (KoLL). <p>5.5 Circumstances which may lead to deprivation of British Citizenship (eg: s40 and 40A BNA 1981);</p> <ul style="list-style-type: none"> • the process; • right of appeal; • s.10 Nationality and Borders Act – deprivation of citizenship without notice
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	<p>5.6 Apply an understanding of modern British nationality law to a given situation</p> <p>5.7 Critically evaluate a given issue or situation to predict probable legal implications</p>	<ul style="list-style-type: none"> • renunciation and re-acquisition law and process (eg: s12-13 BNA 1981). The new section 40 (4A) BNA 1981, inserted by the Immigration Act 2014, permitting deprivation of citizenship in certain situations, even if such deprivation renders a person stateless. • <u>Aziz [2018] EWCA Civ 1884, K2 v. the United Kingdom</u> (Application no. 42387/13), <u>R (Hysaj & Ors) v SSHD [2017] UKSC 82</u> • A clear understanding of how an application for British citizenship can be made. <p>5.6 Application of understanding to a complex scenario.</p> <p>5.7 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate.</p>
<p>6. Understand the law governing the free movement of persons in the EEA</p>	<p>6.1 Explain the free movement rights of European Economic Area citizens</p> <p>6.2 Analyse the free movement rights of third country family members</p>	<p>6.1 Applications under the EU settlement scheme and Appendix EU – understanding of settled and pre-settled status.</p> <ul style="list-style-type: none"> • Frontier Worker Permit holders • Ongoing litigation in respect of Zambrano carers and the EUSS – <u>Akinsanya v SSHD [2022] EWCA</u> <p>6.2 Different periods of residence; different permissible considerations <u>under EUSS.</u></p>

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	<p>6.3 Explain the benefits to Turkish nationals of the Turkish Association Agreement</p> <p>6.4 Apply an understanding of the law governing the free movement of persons in the EU to a given situation</p> <p>6.5 Critically evaluate a given issue or situation to predict probable legal implications</p>	<p>6.3 ‘Standstill clause’ of Ankara Agreement;</p> <ul style="list-style-type: none"> • freezing of immigration law in 1973 (more generous terms for business persons, more generous switching rules); • right to renew work permit with same employer once granted after 1 year; • same profession but different employer after 3 years; • free access to labour market after 4 years. • <u>R (Aydogdu) v Secretary of State for the Home Department (Ankara Agreement – family members – settlement) [2017] UKUT 167 (IAC)</u> – Turkish nationals unable to settle after 4 years since 16 March 2018. • <u>Appendix ECAA requirements</u> <p>6.4 Application of understanding to a complex scenario.</p> <ul style="list-style-type: none"> • An understanding of the EUSS . <p>6.5 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate.</p>
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<p>7. Understand the law of refugee status and asylum application process</p>	<p>7.1 Explain the legal definition of a refugee</p>	<p>7.1 New, restrictive legal definition of a refugee in line with s.12 and s.37 Nationality and Borders Act 2022 coming into force on 28th June 2022. Differential treatment of asylum seekers depending on mode of travel to the UK (“two tier system” - Group 1 and Group 2 refugees).</p> <ul style="list-style-type: none"> • Article 1A (2) of 1951 UN Convention Relating to the Status of Refugees as amended by the 1967 Protocol including <ul style="list-style-type: none"> • ‘well-founded fear’ (standard of proof, personal credibility and future risk elements – s.32 Nationality and Borders Act 2022 introduces new split standard of proof); • ‘of being persecuted’; • ‘Convention reasons’; s.33 Nationality and Borders Act 2022 imposes a new 2 stage test for establishing membership of a PSG. • ‘protection’; <ul style="list-style-type: none"> Refugee Qualification Directive and domestic Protection Regulations partially translated into new provisions in the Nationality and Borders Act, and also relevant key case law, eg: <u>Ravichandran (1996)</u>, <u>Robinson (1997)</u>, <u>Demirkaya (1999)</u>, <u>Shah and Islam (1999)</u>, <u>Karanakaran (2000)</u>, <u>Horvath (2000)</u>, <u>Montoya v SSHD (2002)</u> <u>Januzi (2006)</u>, <u>K and Fornah (2006)</u>; <u>AH (Sudan) and Others (FC) (2007)</u>, <u>PS Sri Lanka (2008)</u>, <u>AA (Uganda) (2008)</u> <u>HJ (Iran) (2010)</u>, <u>RT (Zimbabwe) and others v SSHD (2012)</u>;
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	<p>7.2 Analyse the requirements of a claim for refugee status</p> <p>7.3 Analyse the cessation and exclusion clauses of the Refugee Convention</p>	<p>7.2 A clear understanding of factors affecting credibility/truthfulness;</p> <ul style="list-style-type: none"> • s8 AI (TC) A 2004, para 339I HC 395, para 339L HC 395; • key credibility principles in eg: <u>Karakas</u> (1998), <u>Karanakaran</u> (2000), <u>Mibanga</u> (2005), <u>TK (Burundi)</u> (2009), <u>KS (benefit of the doubt)</u> (2014) UKUT 00552 (IAC), • use of country information with regards to credibility and proving future risk and more sophisticated concepts emerging from case law, eg: risk based on future activities, being 'discreet', internal relocation, sufficiency of protection, conscientious objection, civil war and differential impact, persecution by state and non-state actors. • Changes to asylum application from EU nationals - invalid unless exceptional circumstances apply. <p>7.3 Circumstances where cessation and/or exclusion may arise and potential triggers for both (Article 1D, Article 1E and Article 1F);</p> <ul style="list-style-type: none"> • terms and application of s72 of Nationality, Immigration and Asylum Act 2002 and accompanying regulations. • Relevant caselaw including <u>KJ (Sri Lanka) v SSHD</u> (2009), <u>R (on the application of JS) (Sri Lanka)</u> (2010), <u>Al-Sirri v SSHD</u> (2012).
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	<p>7.6 Apply an understanding of the law of refugee status and asylum application process to a given situation</p> <p>7.7 Critically evaluate a given issue or situation to predict probable legal implications</p>	<p>7.6 Application of understanding to a complex scenario.</p> <ul style="list-style-type: none"> • A clear understanding of how an asylum claim can be made. <p>7.7 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate.</p>
<p>8. Understand the law of human rights claims for protection and humanitarian protection</p>	<p>8.1 Explain the application of human rights law in an international protection context</p>	<p>8.1 An understanding of the European Convention on Human Rights and Human Rights Act 1998 and applicability to Home Office and Tribunal decisions;</p> <ul style="list-style-type: none"> • human rights appeals and grounds within the First-tier Tribunal; • terms and interpretation of articles, in particular Article 3 and Article 8 of the ECHR; • fundamental Strasbourg and UK case law on both, eg: <u>Pretty v United Kingdom</u> (2002) 35 EHRR 167, <u>Ullah and Do v SSHD</u> (2004), <u>Ireland v UK</u> (App. no. 5310/71), <u>Soering v UK</u> (App. no. 14038/88), <u>Chahal v UK</u> (App. no. 22414/93), <u>Bensaid v UK</u> (App. no. 44599/98), <u>N v UK</u> (App. no. 26565/05), <u>Paposhvilli v Belgium</u> [2017] Imm AR 867, <u>AM (Zimbabwe) & Anor v Secretary of State for the Home Department</u> [2018] EWCA Civ 64: <u>AM (Zimbabwe) v SSHD</u> [2020] UKSC 17, <u>Savran v Denmark</u> (Application no: 57467/15), <u>AM (Art.3; health cases) Zimbabwe</u> [2022] UKUT 131 (IAC)

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	<p>8.2 Analyse the circumstances where an in-country Article 8 claim might be successful</p>	<ul style="list-style-type: none"> • relationship between Art 3 ECHR and protections under Refugee Convention 1951. • Article 4 ECHR and cases involving current and future threat of trafficking, Understanding of significance of reasonable grounds decision and conclusive grounds decision insofar as they relate to the consideration of protection claims. • Awareness of bespoke humanitarian routes e.g Homes for Ukraine scheme, Ukraine Family Scheme, Afghan Relocation and Assistance Policy, Syrian Resettlement Programme (VPRS) and others <p>8.2 Two stage test undertaken by the courts in relation to Article 8 cases requiring assessment of Article 8 under the immigration rules followed a broader assessment where necessary. A clear understanding of the principles of Article 8 case law, eg:</p> <ul style="list-style-type: none"> • <u>SSHD, ex parte Amjad Mahmood</u> (2000), <u>Boultif v Switzerland</u> (App. no. 54273/00), <u>Uner v Netherlands</u> (App. no. 46410/99), <u>Razgar v SSHD</u> (2004), <u>Huang v SSHD</u> (2007); • <u>EM (Lebanon)</u> (2008), <u>EB Kosovo</u> (2008), <u>Chikwamba</u> (2008), <u>Beoku-Betts</u> (2008), <u>VW and AB</u> (2009), <u>ZH (Tanzania)</u> (2011); • <u>Zoumbas</u> (2013) s55 BCIA 2009; understanding of circumstances where high tests and thresholds for Article 8
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	<p>8.3 Explain the regime of humanitarian protection</p>	<p>might be satisfied. <u>Onwuje v SSHD (2018) EWCA Civ 331</u> - an entrepreneur's ownership of, and involvement in, his or her business may also be regarded as an aspect of their private life for the purpose of Article 8.</p> <ul style="list-style-type: none"> • Appendix Private Life and new requirements in relation to settlement. Including accelerated route to ILR for some children and young people. <p>8.3 Paragraph 339C Immigration Rules. Humanitarian Protection claim can be made only in respect of country of origin';</p> <ul style="list-style-type: none"> • indiscriminate violence protection; • type of status granted and steps towards settlement; active reviews; • family reunion; • Caselaw including <u>Elgafaji [2009] EUECJ c-465/07</u>, <u>QD (Iraq) v SSHD [2009] EWCA Civ 620</u>, • Exclusion from Humanitarian Protection • New provisions in relation to grant of Humanitarian Protection coming into force on 28th June 2022 in relation to length of leave, family reunion, access to public funds and ability to settle.
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	<p>8.4 Summarise the discretionary leave policy</p> <p>8.5 Apply an understanding of the law of human rights claims for protection and humanitarian protection to a given situation</p> <p>8.6 Critically evaluate a given issue or situation to predict probable legal implications</p>	<p>8.4 An understanding of DL policy on unaccompanied minors; grants in response to Article 8 claims;</p> <ul style="list-style-type: none"> • type of status granted; • steps towards settlement; • active reviews. <p>8.5 Application of understanding to a complex scenario.</p> <p>8.6 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate.</p>
<p>9. Understand the law on deportation and removal</p>	<p>9.1 Describe the law on and process of deportation and administrative removal</p>	<p>9.1 Power to detain and detention process found in Schedule 2 and 3 of the Immigration Act 1971 (as amended). Liability for deportation and administrative removal;</p> <ul style="list-style-type: none"> • exclusion from deportation under s7 Immigration Act 1971; • different stages of the process; • the grounds for administrative removal under s10(1) IAA 1999 of any person who ‘requires leave to enter or remain in the United Kingdom but does not have it’ and power to remove member of family of person facing removal under s10(2) IAA 1999 (as amended by Immigration Act 2014 s1). • Grounds for deportation under s3(5)(a), and s3(6) IA 1971; • automatic deportation under s32 UK Borders Act 2007;

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		<ul style="list-style-type: none">• implications of <u>R v Kluxen</u> (2010);• revocation of a deportation order, restrictions on revocation, effect of revocation and rights of appeal.• Statutory public interest considerations under Part 5A Nationality Asylum and Immigration Act 2002 (as inserted by s19 Immigration Act 2014) and under paras 390-395 HC 395 and paras 398-399A HC395. Section 94B Nationality Immigration and Asylum Act exception to the right of an in-country deportation appeal where no real risk of serious irreversible harm (as inserted by Immigration Act 2014 s17). Immigration (European Economic Area) (Amendment) No.2 Regulation 2014 – Appeals against a deportation decision no longer prevents removal unless the exceptions apply. Removals and appeals changed by the Immigration Act 2014; power of removal, notice of liability for removal, removal directions, types of removal notices.• s.29 removal of asylum seekers to safe third countries e.g Impact of the UK and Rwanda Migration and Economic Development Partnership (“the Rwanda plan”), and any subsequent other partnerships of this nature.
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	<p>9.2 Compare the differences between deportation and removal</p> <p>9.3 Analyse the principles behind deportation</p>	<p>9.2 Presumption in favour of deportation;</p> <ul style="list-style-type: none"> • weight to be given to public interest; • s.117C NIAA 2002 additional considerations in the cases of foreign criminals, as defined in s.117D (as amended by Immigration Act 2014). Exclusion for 10 years or permanently; • need to apply for revocation; • likely detention in run up to any appeal: re-entry ban after administrative removal. <p>9.3 Who is likely to be considered for deportation or removal;</p> <ul style="list-style-type: none"> • arguing deportation or removal cases: relevance of Article 8 ECHR Key case law, eg: <u>N (Kenya)</u> (2004) <u>EWCA Civ 1094</u>, arguing reasonableness of relocation for third parties and relevant case law, eg: <u>Amjad Mahmood</u> (2000), <u>Huang</u> (2007), <u>JO (Uganda)</u> and <u>JT (Ivory Coast)</u> (2010); • paras 398, 399 and 399A HC 395 guidance on Home Office decision making and interpreting ‘insurmountable obstacles’ and ‘exceptional circumstances’ (now replaced by ‘very compelling circumstances’); • Liability for automatic deportation under s32 UKBA 2007; • relevant case law on deportation of foreign criminals eg: <u>SS Nigeria</u> (2013) (automatic deportation and article 8), <u>MF (Nigeria)</u> (2013) (immigration rules and article 8), <u>SSHD v KF (Nigeria)</u> [2019]
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	<p>9.4 Apply an understanding of the law on deportation and removal to a given situation</p> <p>9.5 Critically evaluate a given issue or situation to predict probable legal implications</p>	<p><u>EWCA Civ 2051, SSHD v PG (Jamaica) [2019] EWCA Civ 1213</u> (meaning of 'unduly harsh').</p> <p>9.4 Application of understanding to a complex scenario.</p> <ul style="list-style-type: none"> • A clear understanding of how a deportation order/removal notices can be made. <p>9.5 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate.</p>
<p>10. Understand the appeals process and other remedies</p>	<p>10.1 Describe the structure of the statutory appeals process</p>	<p>10.1 Appeal to First-tier Tribunal;</p> <ul style="list-style-type: none"> • Upper Tribunal; Court of Appeal; • Supreme Court; ECtHR; • also the parallel processes relating to the European Court of Justice and judicial review, including the exercise of any right to administrative review. • Section 92 NIAA 2002 on avenues of appeal (as inserted by Immigration Act 2014). Rights and grounds of appeal under s82 and s84 NIAA 2002 (as amended by s15 Immigration Act 2014). • Out of country appeals where claim certified under s94B NIAA 2002 – impact of <u>R (Kiarie and Byndloss) v SSHD</u> (2017) UKSC on human rights appeals. • Deemed refusal of leave to enter under para 2A of Sch 2 Immigration Act 1971 – empowers an immigration officer to cancel a passenger who arrives with continuing

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	<p>10.2 Explain the key provisions of the appeals procedure rules</p> <p>10.3 Explain the possible uses of judicial review in an immigration and asylum context</p>	<p>leave without right of appeal. No rights of appeal for applicants seeking entry to the UK as a family visitor.</p> <p>10.2 Lodging appeals; time limits for first-instance appeals and applications to appeal further;</p> <ul style="list-style-type: none"> • procedure for allegations of, and tests for accepting, out of time appeals and applications; • case management powers; • The First-tier Tribunal Procedure Rules 2014. • Upper Tribunal Procedure Rules 2008 • Pre-action protocol for Judicial Review. • Online appeals procedure • Abbreviated appeal process following priority removal notice • Accelerated detained appeals <p>10.3 Fresh claims under immigration rule 353;</p> <ul style="list-style-type: none"> • 3rd country cases; failures to follow policies (and extent to which this can be remedied in the tribunal and/or courts); • abuse of process; • legitimate expectation. Decisions with no statutory right of appeal and the remedy of judicial review where no appealable decision has been made. • Increased need for judicial review after appeal rights restricted by Immigration Act 2014. • Curtailment of leave in country no longer
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	<p>10.4 Analyse the strengths and weaknesses of a case for bail made through the immigration bail application process</p>	<p>attracts a right of appeal.</p> <p>10.4 Release and bail and factors relevant to bail. Mandatory use of B1 form;</p> <ul style="list-style-type: none"> • day listing policy; • information needed to apply for bail; sureties not essential but can be very helpful; • what makes a good surety; • role of personal recognizance. Prevention of • renewal of bail applications for 28 days unless material change of circumstances. Awareness that The Immigration Act 2016 repealed paras 21-25 and 29-34 of Sch 2 to the Immigration Act 1971 and most of Sch 3. Awareness that Temporary Admission and Temporary Release have now been abolished under s61 and Schedule 10 of IA 2016 and replaced with immigration bail • Bail applications are made to the Home Office and if this is refused, applications are made to the First-Tier. The tribunal is no longer permitted to grant bail in any circumstances for eight days after arrival or if removal is (supposed to be) within 14 days. The introduction of automatic bail hearings. • Knowledge of relevant caselaw to lawfulness of detention e.g <u>Hardial Singh</u> (1983).
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	<p>10.5 Apply an understanding of the appeals process and other remedies to a given situation</p> <p>10.6 Critically evaluate a given issue or situation to predict probable legal implications</p>	<p>10.5 Application of understanding to a complex scenario.</p> <p>10.6 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate.</p>
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Additional information about the unit	
Unit aim(s)	To accredit a broad and detailed understanding of Immigration Law
Details of the relationship between the unit and relevant national occupational standards (if appropriate)	This unit may provide relevant underpinning knowledge and understanding towards units of the Legal Advice standards
Details of the relationship between the unit and other standards or curricula (if appropriate)	N/A
Assessment requirements specified by a sector or regulatory body (if appropriate)	N/A
Endorsement of the unit by a sector or other appropriate body (if required)	N/A
Location of the unit within the subject/sector classification	15.5 Law and Legal Services
Name of the organisation submitting the unit	CILEx (The Chartered Institute of Legal Executives)
Availability for use	Available to all Awarding Bodies to award credit (shared)
Availability for delivery	1 September 2009

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