

CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

JUNE 2021
LEVEL 6 – UNIT 8 – IMMIGRATION LAW

Note to Candidates and Learning Centre Tutors:

The purpose of the suggested points for responses is to provide candidates and learning centre tutors with guidance as to the key points candidates should have included in their answers to the June 2021 examinations. The suggested points for responses sets out a response that a good (merit/distinction) candidate would have provided. Candidates will have received credit, where applicable, for other points not addressed by the marking scheme.

Candidates and learning centre tutors should review the suggested points for responses in conjunction with the question papers and the Chief Examiners' **comments contained within this report**, which provide feedback on candidate performance in the examination.

CHIEF EXAMINER COMMENTS

Where candidates did not perform well it was due to excessively short answers for high mark questions, poor knowledge of relevant law and large areas of omission and error. Several candidates answered too few questions which severely limited the marks they could achieve. Candidates are reminded to carefully read the exam rubric and ensure that they fully comprehend the number of questions they should answer.

There was a broad range of performance across the cohort, candidates able to achieve distinction grades, pass grades and fail grades.

The paper covered key areas across a broad range of the unit specification including questions on asylum, humanitarian protection, bail, administrative removal, immigration, nationality and human rights law. The paper covered 80% of the unit specification which is available to all candidates and should form the basis of their preparatory work for the exam.

On the paper, the candidates were required to answer 4 full questions (in some cases encompassing a part (a) and a part (b) to that question) including at least one question from section A and at least one question from section B. As noted above, some candidates did not answer the maximum number of questions.

CANDIDATE PERFORMANCE FOR EACH QUESTION

Section A

Question 1(a)

Overall, the candidates answered this question well, correctly identifying the relevant provisions of the immigration rules. There was a mixture of answering on the basis of old rules and new rules (which was to be expected given the recent change in the law) and marks were awarded accordingly as the mark scheme had been drafted to accommodate an answer on either basis.

(b)

Overall, answers to this question were appropriate with most candidates identifying appropriate remedies. A minority of candidates identified a right of appeal, which was not applicable.

Question 2

This question was answered by very few candidates. One of the answers given encompassed some of the relevant material and received a pass mark. Another answer was very superficial and received a low mark.

Question 3

Answers identified some relevant caselaw and contained some good discussion and achieved high pass marks.

Question 4

This question was answered by very few candidates. Answers to this question varied from receiving a low fail mark to a clear pass mark.

Section B

Question 1

Answers varied in quality. Some candidates discussed resisting removal on Article 8 grounds, which was able to attract some marks. None of the answers comprehensively addressed the question posed.

Question 2

This question was answered well and was probably the most successful question on the paper, with one candidate achieving a distinction mark and all but one candidate, achieving a pass mark for the answer provided.

Question 3(a)

This question was not answered well with candidates scoring low marks. This is a consistent problem across a number of papers whereby candidates do not seem to understand the legal basis for Humanitarian Protection.

(b)

This part of the question was answered much better than part (a). This is, in part, because the family reunion requirements for HP mirror those for refugee status, so the candidates were able to pick up marks for requirements and evidence but not references.

Question 4(a)

One answer to this question was answered very well and achieved a high mark. Another answer demonstrated some knowledge but achieved a low mark.

(b)

As above, one very good answer, whereas another demonstrated some knowledge and was able to accrue some marks.

**SUGGESTED POINTS FOR RESPONSES
LEVEL 6 – UNIT 8 – IMMIGRATION LAW**

The purpose of this document is to provide candidates and learning centre tutors with guidance as to the key points candidates should have included in their answers to the June 2021 examinations. The Suggested Points for Responses do not for all questions set out all the points which candidates may have included in their responses to the questions. Candidates will have received credit, where applicable, for other points not addressed. Candidates and learning centre tutors should review this document in conjunction with the question papers and the Chief Examiners' reports which provide feedback on candidate's performance in the examination.

Section A

Question Number	Suggested points for responses	Max Marks
Q1(a)	<p>An answer which consists of a reasoned evaluation of relevant issues supported by evidence and legal authority.</p> <p>Responses should include:</p> <ul style="list-style-type: none"> • Discussion of requirements of the Student route including information to be included on CAS, reference to Appendix A and paragraph 254ZV • Financial requirements • English language ability • Relevant caselaw <p>Responses could include:</p> <ul style="list-style-type: none"> • Relevant case law may include: <u>R (on the application of Hazret Kose) v SSHD (2011) EWHC 5294 (admin)</u>, <u>R (Global Vision College Ltd) v SSHD (2014) EWCA Civ 659</u>, <u>R (on the application of Mushtaq) v ECO Islamabad, Pakistan (2015) UKUT 00224</u> • Other relevant caselaw 	15
Q1(b)	<p>An answer which consists of a reasoned evaluation of relevant issues supported by evidence and legal authority.</p> <p>Responses should include:</p> <ul style="list-style-type: none"> • Identification that rights of appeal to the Tribunal are not available in student visa cases. • Reasoned discussion of administrative review, reapplication and judicial review and when each remedy may be relevant, including discussion of applicable time limits. 	10

	<p>Responses could include:</p> <ul style="list-style-type: none"> • More extensive discussion of one or two of the available remedies in more detail than is expected. • Practical details related to either of the three identified remedies. 	
Total		25 marks
Question Number	Suggested points for responses	Max Marks
Q2	<p>An answer which consists of a reasoned evaluation of relevant issues supported by evidence and legal authority.</p> <p>Responses should include:</p> <ul style="list-style-type: none"> • Discussion of Article 1D, 1E and 1F of the Refugee Convention • Discussion of Article 17 RQD/paragraph 339D immigration rules • Caselaw relevant to the above. <p>Responses could include:</p> <ul style="list-style-type: none"> • Article 1D - <u>El Kott, Abed El Karemand others v Bevandorlasies Allampolgarsagi Hivatal</u> [2012] EUECJ C-364/11, <u>Said (Article 1D: meaning) Palestinian Territories</u> [2012] UKUT 413 (IAC) • Article 1E - <u>Zeng et al. v. Canada (Minister of Citizenship and Immigration)</u>, (2010) 402 N.R. 154 (FCA), <u>KK and others (nationality: North Korea) CG</u> [2011] UKUT 92 (IAC) • Article 1F - <u>KJ (Sri Lanka) v SSHD</u> [2009] EWCA Civ292, <u>Al-Sirri v SSHD</u> [2012] UKSC 54, <u>R (on the application of JS) (Sri Lanka) v SSHD</u> [2010] UKSC 15, <u>B and D (C-57/09 and C-101/09 (joined))</u>, <u>Lounani (C-573/14)</u>, <u>Youssef v SSHD</u> [2018] EWCA Civ 933, <u>SSHD v NF</u> [2021] EWCA Civ 17 • Article 17 RQD/339D - <u>AH (Algeria) v SSHD</u> [2012] EWCA Civ395, <u>Ahmed C-369/17</u>, • Other relevant caselaw. 	25
Total		25 marks

Question Number	Suggested points for responses	Max Marks
Q3	<p>An answer which consists of a reasoned evaluation of relevant issues supported by evidence and legal authority.</p> <p>Responses should include:</p> <ul style="list-style-type: none"> • The fact that such applications are outside the immigration rules. • The development of caselaw in this area over time. • An understanding of the relevance of <i>N v SSHD</i>, <i>Paposhvilli</i> and other caselaw. • Understanding of threshold to be met and evidential requirements. • An understanding that both Article 3 and Article 8 arguments are separately freestanding but that it will usually be appropriate to make both sets of arguments in a given case. <p>Responses could include:</p> <ul style="list-style-type: none"> • Caselaw relevant to Article 3 including - <i>D v UK</i> (application no. 30240/96), <i>N v SSHD</i> [2005] UKHL 31, <i>N v UK</i> (application no. 26565/05), <i>Paposhvili v Belgium</i> (application no. 41738/10), <i>EA & Ors (Article 3 medical cases – Paposhvili not applicable)</i> [2017] UKUT 445 (IAC), <i>AM (Zimbabwe) and another v SSHD</i> [2018] EWCA Civ 64, <i>AM (Zimbabwe) v Secretary of State for the Home Department</i> [2020] UKSC 17 • Caselaw relevant to Article 8 including - <i>SL (St Lucia) v SSHD</i> [2018] EWCA Civ 1894, <i>Razgar, Huang, JN (Uganda) v SSHD</i> [2007], <i>Bensaid v UK</i> (Application no: 44599/98), <i>GS and EO (Article 3 – health cases) India</i> [2012] UKUT 00397 (IAC). • Discussion of application procedure or other relevant practical issues. 	25
Total	25 marks	

Question Number	Suggested points for responses	Max Marks
Q4	<p>An answer which consists of a reasoned evaluation of relevant issues supported by evidence and legal authority.</p> <p>Responses should include:</p> <ul style="list-style-type: none"> • Discussion of Sch. 10 Immigration Act 2016 as it relates to bail granted by SSHD, including: <ul style="list-style-type: none"> - Bail conditions - Relevant factors - Financial condition - Accommodation - Breach of bail conditions - Specific vulnerabilities that may increase the likelihood of bail being granted • Relevant caselaw. • Concept of “immigration bail” now replaces all previous terminology such as “temporary admission” and “temporary release” <p>Responses could include:</p> <ul style="list-style-type: none"> • Relevant caselaw including, <u>R (on the application of AM) v SSHD [2012] EWCA Civ 521</u>, <u>R (on the application of HA (Nigeria)) v SSHD [2012] EWHC 979 (Admin)</u>, <u>R (Aboro) v SSHD [2018] EWHC 1436 (Admin)</u>, <u>R (ZV) v SSHD [2018] EWHC 2725 (Admin)</u> 	25
Total		25 marks

Section B

Question Number	Suggested points for responses	Max Marks
Q1	<p>An answer which consists of a reasoned evaluation of relevant issues supported by evidence and legal authority.</p> <p>Responses should include:</p> <ul style="list-style-type: none"> • Discussion of sch. 2 and sch. 3 Immigration Act 1971 • S.62 Nationality Immigration and Asylum Act 2002 • ‘Hardial Singh’ principle in respect of time limits • Administrative removal under s.10 Immigration and Asylum Act 1999 and no right of appeal – judicial review is the only applicable remedy to the scenario. 	25

	<ul style="list-style-type: none"> • An outline of arguments against removal based on family life (caselaw and statutory provisions and Appendix FM Ex.1) including consideration of reasonableness. • Consideration of evidence <p>Responses could include:</p> <ul style="list-style-type: none"> • Caselaw relevant to discussion of power to detain and time limits may include, <u>ZA (Iraq) [2015] EWCA Civ 168</u>, <u>J.N. v UK (application no: 37289/12) (2016)</u>, <u>R (on the application of Bizimana) v SSHD [2012] EWCA Civ 414</u> (failure to consider s.55 duty). • Caselaw relevant to administrative removal could include, <u>MS (Palestinian Territories) v SSHD (2009) EWCA Civ 17</u>, <u>MA (Statelessness; Removal) (2005) UKAIT 00161</u> • Legal authority to be relied upon with regard to arguments against removal based on family life could include, <u>ZH (Tanzania) (FC) (Appellant) v SSHD (2011) UKSC 4</u>, s. 117B and s. 117D Immigration Act 2014, <u>MA (Pakistan) v Upper Tribunal (Immigration and Asylum Chamber)[2016] EWCA Civ705</u>, <u>R (subsisting parental relationship –s117B(6)) Pakistan UKUT 3345 (IAC)</u> • Issues relevant to application process or other practical points. • S.55 duty – best interests of child in the UK. 	
Total		25 marks
Question Number	Suggested points for responses	Max Marks
Q2	<p>An answer which consists of a reasoned evaluation of relevant issues supported by evidence and legal authority.</p> <p>Responses should include:</p> <ul style="list-style-type: none"> • Detailed discussion of the relevant provisions of Appendix V, including: <ul style="list-style-type: none"> - Freedom to marry and genuineness of relationship - Financial requirements - Suitability - Accommodation - Evidence required - Human rights considerations <p>Responses could include:</p> <ul style="list-style-type: none"> • Discussion of possible remedies e.g admin review, judicial review if refused. • Application procedure • Human rights appeal (Baihinga (r. 22; human rights appeal: requirements) [2018] UKUT 90 (IAC) – but Home Office guidance is less generous). 	25

		Total	25 marks
Question Number	Suggested points for responses		Max Marks
Q3(a)	<p>An answer which consists of a reasoned evaluation of relevant issues supported by evidence and legal authority.</p> <p>Responses should include:</p> <ul style="list-style-type: none"> • Discussion of Legal framework of HP – EU Directive 2004/83/EC 29th April 2004 – “Refugee Qualification Directive” and writing into Immigration Rules at paragraph 339C • Discussion of operation of Article 15(c) RQD • Discussion of caselaw in respect of Article 15(c) RQD. <p>Responses could include:</p> <ul style="list-style-type: none"> • Discussion of caselaw may include, Elgafaji [2009] EUECJ C-465/07, QD (Iraq) v SSHD [2009] EWCA Civ 620, GS (Article 15(c): indiscriminate violence) Afghanistan CG [2009] UKAIT 44, HM and others (Article 15(c)) Iraq CG [2010] UKUT 331 (IAC) • Discussion may include reference to the current country guidance case for Libya - ZMM (Article 15(c)) Libya CG [2017] UKUT 263 (IAC) • Application or procedural points 		15
Q3(b)	<p>An answer which consists of a reasoned evaluation of relevant issues supported by evidence and legal authority.</p> <p>Responses should include:</p> <ul style="list-style-type: none"> • Discussion of family reunion provisions under the immigration rules as they relate to recipients of Humanitarian Protection: <ul style="list-style-type: none"> - Paragraph 352FA – spouse - Paragraph 352FG – minor child • Evidential considerations <p>Responses could include:</p> <ul style="list-style-type: none"> • Application process and other practical considerations 		10
		Total	25 marks

Question Number	Suggested points for responses	Max Marks
Q4(a)	<p>An answer which consists of a reasoned evaluation of relevant issues supported by evidence and legal authority.</p> <p>Responses should include:</p> <ul style="list-style-type: none"> • Discussion of entitlement to register as British under s.1(4) British Nationality Act 1981 and relevant evidential considerations. • Discussion of the SSHD discretion to register a child as British under s.3(1) BNA 1981. • Discussion of good character and relevant caselaw. <p>Responses could include:</p> <ul style="list-style-type: none"> • Caselaw in respect of s.3(1) may include, <i>Genovese v Malta</i> (2012) (ECtHR), <i>R (Williams) v SSHD</i> (2015) EWHC • Caselaw in respect of good character may include, <i>TN (Afghanistan) v SSHD</i> [2015] UKSC 40, [2015] 1 WLR 3083, <i>R (Hiri) v SSHD</i> [2014] EWHC 254 (Admin) • Application process, non-availability of fee waivers (<i>R v Williams</i> (2017)), or other practical points. 	15
Q4(b)	<p>An answer which consists of a reasoned evaluation of relevant issues supported by evidence and legal authority.</p> <p>Responses should include:</p> <ul style="list-style-type: none"> • Requirements of paragraph 276ADE (iv) immigration rules • Concept of ‘reasonableness’ and relevant caselaw. • Evidential considerations <p>Responses could include:</p> <ul style="list-style-type: none"> • Caselaw relevant to reasonableness might include, <i>MT and ET (child’s best interests; ex tempore pilot) Nigeria</i> [2018] UKUT 88 (IAC), <i>PD and Others (Article 8: conjoined family claims) Sri Lanka</i> [2016] UKUT 108 (IAC), <i>Zoumbas v Secretary of State for the Home Department</i> [2013] UKSC 74 • SSHD guidance on reasonableness. • Practical points such as application process, fee waivers, next steps, remedies following refusal. • Discussion of s.3(1) BNA 1981 (although this would not be the most appropriate application) • Discussion of Article 8 more broadly (e.g <i>Hesham Ali</i> 2-stage test and <i>Razgar</i> may attract some marks). • s.55 duty – best interests of the child 	10
Total		25 marks