LEVEL 6 - UNIT 8 – IMMIGRATION LAW
SUGGESTED ANSWERS – JANUARY 2017

Note to Candidates and Tutors:

The purpose of the suggested answers is to provide students and tutors with guidance as to the key points students should have included in their answers to the January 2017 examinations. The suggested answers set out a response that a good (merit/distinction) candidate would have provided. The suggested answers do not for all questions set out all the points which students may have included in their responses to the questions. Students will have received credit, where applicable, for other points not addressed by the suggested answers.

Students and tutors should review the suggested answers in conjunction with the question papers and the Chief Examiners' reports which provide feedback on student performance in the examination.

SECTION A

Question 1

Administrative removal occurs when a person has no leave to enter, or leave to remain in the UK, perhaps because they are an illegal entrant or a person who has breached the conditions of their leave. That person will be liable to be removed.

Part 1 of the Immigration Act 2014 introduced a new removal power which repealed and replaced the pre-existing section 10 of the Immigration and Asylum Act 1999.

Under the old law, administrative removal was a two part process. Firstly a removal decision was made and, if there was no appeal lodged or an appeal was determined against the appellant, the Home Office would then set removal directions.

From 6 April 2015, removal decisions are no longer required. Under the current law, the amended s10 of the Immigration and Asylum Act 1999 permits removal directions to be issued followed by a notice of liability to remove, which should normally state the date and details of removal. Therefore those who require leave, but do not have leave to enter or remain in the UK, will be liable to be removed from the UK.

Those without leave must be notified of their liability to be removed. There are two main types of removal notices:

1) RED0001.
2) Caseworker decision.

A RED.0001 removal notice is used when a person has no leave to remain in the UK and is therefore liable to be removed. A RED.0001 notice does not invalidate any pending application.

A RED.0001 notice is also issued when a person with existing leave to remain in the UK is found working in breach of their leave, which makes them liable to be removed.

When decisions are made by caseworkers (for example when an application for administrative review is unsuccessful or in a situation where an application has been deemed invalid), such decisions may contain a notice of liability to be removed. Notices served on a person in this way do not require a RED0001 notice to be served.

The information contained in a removal notice includes:

- Confirmation that the person is liable to be removed.
- Confirmation of the country to which the person will be removed to if they do not leave on their own accord.
- Details of the consequences of being in the UK without a visa.
- Details of the help available if any for the person to return back to their home country.
- A s120 one stop notice, which gives the person an opportunity to state any grounds not already raised as to why they should not be removed from the UK.
- Confirmation that there is an ongoing duty to raise new grounds while there is no visa to remain in the UK.

A RED 0001 removal notice will not be served on a person when they have a pending application, appeal or administrative review ongoing. They may be required to report to the Police station or the Home Office.

There is a 3 months removal window during which a person may be removed, depending on the removal directions issued. In some cases, a person may not be removed for the first 7 days from receiving a removal direction, or a time determined by the Home Office. In other cases such as in family, asylum and human rights cases, a further notice will be given before removal will be effective.

Analysis

The issuance of removal decisions and directions under the former section 10 of the Immigration and Asylum Act 1999 permitted a removal against those, including family members, who had overstayed their visas, those who otherwise breached the conditions of their leave, those who used deception in seeking leave to remain in the UK and those whose indefinite leave to remain was revoked under section 76(3) of the 1999 Act. By contrast, the amended section 10(1) of the Immigration and Asylum Act 1999 allows removal of a person who is without leave to enter or remain in the UK, but who should have obtained it. The amended section consequently abolishes the need for a removal decision to be made before a removal direction is set. As there is no decision made, there is no decision to appeal. The only option available would be judicial review. The process of judicial review is long and protracted and as such causes further delays and expense to the public purse.

A "member of the family" is widely defined to include partner, parents, adult dependent relative or child living in the same household. The family member must have leave on the basis of family life with the person facing removal. The

removal powers do not apply if the family member is a British citizen or has an enforceable EU rights to reside.

If a notice of removal is served, the notice invalidates any leave to remain in the UK.

A number of criticisms have been laid against these amendments notable by the Joint Committee on Human Rights. In particular, it seems fundamentally unfair that the Secretary of State has effectively removed access to independent courts and tribunals and the rights to effective remedies for those affected by some adverse decisions made by the Secretary of State. The only effective remedy now available, which is judicial review, is inaccessible and unaffordable.

Question 2(a)

The decisions which attract a right of appeal under the current appeals regime include:

- A decision to refuse an asylum claim – this is not in itself appealable but if it is associated with a removal decision, then it is appealable.
- Under s83 of the Nationality, Immigration and Asylum Act 2002 ('the 2002 Act') a person refused asylum, but who has been granted leave to enter or remain of more than a year, can appeal against the decision to refuse asylum (on asylum or humanitarian grounds only).
- A decision to refuse a humanitarian protection claim (s82 (1)(a))
- A decision to refuse human rights claim (s82(1)(b)).
- A decision to revoke a protection status (s82(1)(c))

Only a decision where a claim is not certified and the decision is made while the applicant is in the UK will attract an in-country right of appeal.

The right of appeal applies to any of these decisions made on or after 6 April 2015 regardless of the date of application.

The reduction in appeal rights is one of the most contentious provisions of the Immigration Act 2014. The removal of a fundamental right to challenge unlawful administrative decisions may be challengeable as incompatible with the right to effective remedy under the ECHR. Only appeals based on the grounds that a removal would breach either the refugee convention, the UK's obligations to grant humanitarian protection, human rights or EU rights can be raised. A further point of contention is that allowable grounds cannot be raised at a later date.

An appellant can no longer appeal on the grounds that a decision made by the Home Office was not in accordance with the immigration rules, was not in accordance with the law, was racially discriminatory and that the Home Office should have exercise its discretion differently.

Question 2(b)

Some residual rights of appeal pre-Immigration Act 2014 exists for decisions made on or after 6 April 2015. These include:

- Where an applicant made an application in-time to the Home Office and their leave expired by the time the Home Office notified them of the decision to refuse, the applicant will have a right of appeal if their leave to vary was refused, which then results in the applicant having no leave.

- Appeal against a refusal to grant a certificate of entitlement to right of abode.
- Revocation of indefinite leave to enter or remain under s76 of the 2002 Act.
- Refusal of leave to enter - appealable under s82(2)(a) of the 2002 Act. Leave to enter can be refused at port if the applicant does not meet the requirements for entry. Only a person refused leave to enter who holds valid entry clearance for the purpose they seek entry can appeal that refusal.
- Refusal of entry clearance – appealable under s82(2)(b) of the 2002 Act. Entry clearance (including a visa) will be refused at visa issuing posts overseas if the applicant does not meet the requirements. Available grounds of appeal are subject to s88A of the 2002 Act.
- Deprivation of citizenship under s40 of the British Nationality Act 1981.
- Automatic deportation attracts the right of appeal – this is appealable under s35 of the Borders 2007 Act (the appealable decision is that s32(5) of the Borders 2007 Act applies).
- An European Economic Area (EEA) decision under EEA Regulation 26(1) provides for appeal rights to arise. There is, however, no right of appeal against the cancellation of the family member residence stamp, because stamping of passport is not covered in the EEA Regulations. Regulation 11(3) states that an immigration officer may not place a stamp in the passport of a person who holds a residence card when they are admitted into the UK.

Question 3

All European Economic Area (EEA) nationals, Swiss nationals and their respective family members have the right to move freely and reside within the EEA. However, this right is subject to reasonable control and has to be established through checks on arrival where it is appropriate to limit free movement rights. Article 21 TFEU confers a general right for citizens of the EU to move and reside freely within member states, subject to conditions and limitations imposed in the treaties and measures adopted to give them effect.

The free movement rights are governed by the Free Movement Directive 2004/38/EC which all EEA member states are obligated to transpose into their domestic legislation. The Free Movement Directive is implemented in the UK Immigration (European Economic Area) Regulations 2006 ('the 2006 Regulations').

The European Court of Justice (ECJ) enforces the free movement rights when a member state is challenged by the European Commission or makes a ruling when a member state has submitted a question about issues arising. All case law resulting from ECJ judgements are binding on all member states. Infraction proceedings arise when there is a failure to comply with the Directives and ECJ case laws,and there are heavy financial penalties.

All EEA nationals, Swiss nationals and their respective family members who are entitled to free movement, do not require leave to enter the UK or remain in the UK. The UK is also a member of the EEA but British nationals cannot exercise Treaty Rights in the UK because Treaty Rights can only be exercised by an EU national in another member state.

A British national and their third country national family member can only benefit from free movement rights under the Queen v Immigration Appeal Tribunal and

Surinder Singh, ex parte Secretary of State for Home Department [*1992*]('the Surinder Singh principle').

Regulations 22 and 23 of the 2006 Regulations define the powers which an immigration officer may exercise upon EEA nationals, but such powers should only be used to establish whether a passenger is entitled to admission under the EEA Regulations. Beyond this an EEA national should only be questioned where there is a strong reason to remove under grounds of public policy, health or security. The powers under Regulations 22 and 23 have the same effect as those powers granted under Schedule 2 of the Immigration Act 1971. Schedule 2 applies to UK domestic immigration laws.

The provision under Schedule 2 which allows an immigration officer to withdraw leave to enter within 24 hours of granting that leave does not apply to EEA nationals or their family members, because EEA national are admitted in accordance with Regulation 11 of the 2006 Regulations and not according to UK domestic immigration rules.

Under the rights of admission all EEA nationals in accordance with Regulation 11 must be admitted into the UK on the production of a valid national ID card or passport issued by an EEA member state subject to public policy, health and security. This includes those EEA nationals who are subject to deportation or have an extant deportation order.

Article 21 TFEU - this confers a general right for citizens of the EU to move and reside freely within member states, subject to conditions and limitations imposed in the treaties and measures adopted to give them effect.

Under the rights of residence, all EEA nationals are considered to be resident by virtue of their nationality and do not need to be a qualified person for the first 3 months of any time spent in the UK. A non-EEA family member also has automatic rights of residence during this period. After the initial 3 months period, an EEA national is considered to be a resident if they are a qualified person or have the right of permanent residence.

Article 6 Directive 2004/38/EC ('the Citizens' Directive') – this confers a general right of residence in another member state for up to 3 months without any conditions or formalities, but simply on production of a valid identity card or passport.

A qualified person is an EEA national who is exercising treaty rights because they are participating in a designated activity as set out in the EC Treaty and defined in Reg 6 of the 2006 Regulations as follows:

- A jobseeker (Reg 6(1)(a))
- A worker (Reg 6(1)(b))
- A self-employed person (Reg 6(1)(c))
- A self-sufficient person (Reg 6(1)(d))
- A student (Reg 6(1)(e))

With the exception of a jobseeker, a worker and a self-employed person, the possession of comprehensive sickness insurance cover (private health insurance) is a prerequisite of meeting the definition of a qualified person for EEA nationals and their family members.

There are various forms of evidence that a family member of an EEA national may hold to confirm their right of admission by virtue of being a family member of an EEA national:

- EEA family permit
- Residence card
- Permanent residence card

A "family member" is defined by Regulation 7 of the 2006 Regulations as:

- The EEA national's spouse or civil partner;
- Direct descendants of the EEA national or of their spouse or civil partner who are under the age of 21 or are their dependants;
- Dependant direct relatives in the ascending line of the EEA national or of their spouse or civil partner.

The right to admission and residence is automatic once such a family relationship has been established.

An "extended family member" is defined by Regulation 8. Extended family members are subject to extensive examination of their personal circumstances. Extended family members include:

- A relative of an EEA national or of their spouse or civil partner who is residing in an EEA state in which the EEA national also resides and is dependent on the EEA national;
- A member of the EEA national's household and accompanying or joining the EEA national;
- A relative of an EEA national or of their spouse or civil partner who strictly requires personal care from the EEA national or their spouse or civil partner on serious health grounds;
- A person who is a partner of an EEA national who is in a durable relationship with the EEA national.

Retained Right of Residence

A non-EEA family member who has obtained a right of residence under Regulation 10 may retain that right following the death of, departure of or termination of marriage/civil partnership with an EEA national who is a qualified person. In these circumstances, family members of an EEA national might acquire independent rights of admission or residence in the UK.

Question 4

Deportation is described as the forced removal of a non-excluded person from the UK. A person is excluded from deportation if they are a British citizen (in law) or have a right of abode or are a Commonwealth citizen who was ordinarily resident in the UK on 1 January 1973 and has lived in the UK continuously for 5 years prior to the offence or deportation decision.

Deportation is split into two types:

(a) **Automatic deportation** – this is applied when a non-excluded person is given a criminal sentence in the UK of over 12 month's imprisonment.

The power to make automatic deportation is contained in s32 UK Borders Act 2007 and applies to non-British citizens who have been convicted in the UK of an offence and sentenced to a period of imprisonment of at least 12 months.

"Imprisonment" does not include failure to pay fines or compensation. It includes hospital orders and suspended sentences if the term is for at least 12 months. It is activated irrespective of the period actually served. 12 months is a calendar year and 52 weeks is not a sentence that qualifies.

The introduction of automatic deportation has limited the use of the court's power to recommend deportation. Where a person is sentenced to more than 12 months, deportation will take place after the sentence has been served. However, where a person is sentenced to less than 12 months, deportation will only take place (after the sentence has been served) if it is decided that it is conducive to the public good to deport.

Section 32(4) UK Borders Act 2007 creates a statutory presumption that deportation is conducive to the public good and a deportation order must be signed. However, the exclusions to deportation still apply under s33 UK Borders Act 2007.

The exceptions to automatic deportation are:

- Deportation would be contrary to the Refugee Convention or European Convention of Human Rights;
- Deportation will breach an EEA national rights under European law;
- Where the deportee is a child under the age of 18 at the time of conviction;
- Where the deportee is facing extradition or has been ordered to serve a sentence or time in a psychiatric institution under the Mental Health Act 2005;
- Where the deportee is a victim of trafficking.

(b) **Non-automatic deportation** – this applies when deportation is not automatic and the Secretary of State considers that the person's continued presence in the UK is not conducive to the public good. This power is contained within s3(5)a) Immigration Act 1971.

Family members are also considered under s3(5)b Immigration Act 1971. Under this power a sentence of any length is considered, depending on the offence. Although a decision to deport under the Immigration Act is discretionary, there are guidelines to follow in considering deportation, namely:

- The foreign criminal is a non-EEA foreign criminal;
- The recommendation for deportation is made by a criminal court judge;
- A custodial sentence of any length is received for a serious drug offence;
- The foreign criminal is a persistent offender;
- The foreign criminal receives an aggregated or consecutive sentences of 12 months or more;
- The foreign criminal receives a sentence of less than 12 months imprisonment but the secretary of state considers the offence has caused serious harm;
- The foreign criminal has committed a crime overseas and received a custodial sentence of at least 12 months and the crime overseas is also a crime in the UK;
- Other factors considered are – age at the time of the offence, length of residence in the UK, links with country of origin and ties in the UK.

Where a deportation decision is to be made whether it is for discretionary or automatic deportation the secretary of state must identify the person subject to

deportation and give them an opportunity to make representations as to why they should not be deported. The leading cases on deportation are Sanade and others (British citizen – Zambrano – Dereci [2012] UKUT 00048 and SS (Nigeria) v Secretary of State for the Home Department [2013] EWCA Civ 550 (22 May 2013).

SECTION B

Question 1(a)

Persecution

It is likely that Nkiru would have relied on the fact that she had suffered serious harm plus failure of state protection, using the definition of persecution laid down in the case of Shah and Islam [1999]. The physical and emotional abuse and being forced to work as a prostitute clearly show past persecution.

Applying the Refugee Qualification Directive 2004 ('RQD') Article 9 and Regulation 6 of the Refugee Qualification Regulations 2006 ('RQR'), being forced to work as a prostitute against her will is tantamount to being raped and therefore is an act sufficiently serious by its nature. Nkiru may have relied upon the fact that she was coerced by a group of men in Nigeria to travel to Italy and forced to work as a prostitute against her will, and then trafficked into the UK from Italy, as a convention reason.

A social group has to exist independently of the persecution and cannot be defined by the persecution which a potential member is experiencing. Nkiru may have relied upon the convention reason of being a member of a particular social group, as she is a woman in a society that discriminates against women in matters of fundamental human rights (Shah and Islam [1999]; (Okonkwo (1998)). Rape is a grave and abhorrent act amounting to torture (Aydin v Turkey (1997)).

Considering the persistent nature of Nkiru's ill treatment and her being forced into prostitution, the acts can also be seen as sufficiently serious by their repetition, as well as their nature, thus satisfying the alternative definition of persecution in Article 9 RQD and Regulation 6 RQR.

Nkiru could have argued that there was also a real risk of rape if she was returned to Nigeria and this would be well founded, given the reported risk of sexual violence which the government fail to protect against. The reports on Nigeria indicate that the risk of sexual violence is still current although this is less relevant to Nkiru now the appeal rights in the asylum case have been exhausted. The Government are unable to prevent women being taken away to other countries and suffering violence there.

Credibility

The refusal of Nkiru's asylum application may have been because of credibility issues. In assessing credibility, the burden of proof is on the individual asylum seeker. Immigration Rule 339L provides that where an asylum seeker has made every effort to substantiate their account and provided an account which is consistent with the country evidence, a benefit of doubt should be given (Karakas (1998), Karanakaran (2000), KS (benefit of the doubt) [2014] UKUT 00552 (IAC)).

According to s77 Nationality, Immigration and Asylum Act 2002, an asylum seeker cannot normally be removed from the UK without their claim being considered on its merits, unless the asylum seeker arrived from a safe third country, in which case the Home Office may remove the asylum seeker to that safe country under the European Union law arrangements for allocating asylum seekers. Nkiru arrived from Italy and Italy is regarded as a safe country. It is not clear from the facts whether Nkiru had already claimed asylum in Italy and if she did not, the credibility of her claim in the UK will be questionable.

EC Council Regulation No. 604/2013 ("Dublin 3") governs the procedures which must be followed to determine which European Union member state will be responsible for a particular asylum claim. This tends to be the state where the asylum seeker was first detected as entering the European Union territory and in this case it would be Italy.

Corroboration

The Asylum application process, particularly the requirement of corroboration is very complex. It is vital where possible that evidence which supports Nkiru's claim is presented. It is not clear from the fact whether Nkiru provided medical expert evidence, going to the consistency of her claim of being physical and emotional abuse and forced to work as a prostitute against her will and her physical presentation with torture or other ill treatment. If she did not, this may have contributed to the lack of credibility of her claim.

Question 1(b)

The Immigration Rules under Appendix FM section EX identifies the exceptions to certain eligibility requirements for leave to remain as a partner or parent. Nkiru should be making representations to the Home Office to be granted leave on grounds of family life, as a parent of a child who is British or has lived in the UK continuously for 7 years. James is a British citizen by operation of law because his father Raymond is British. Until 2006, a child could only establish a right to British citizenship via either parent as long as s/he was born within a marriage. As amended by s50 (9A) of the BNA 1981, children born outside of wedlock after 1 July 2006 can establish nationality via their father. Raymond is named as the father to James in James' birth certificate. This is sufficient proof to provide. However, under the British Nationality (Proof of Paternity) (Amendment) Regulations 2015, birth certificates issued after 10 September 2015 being named as the father will no longer be sufficient to prove paternity. It is now up to the Secretary of State to determine who is the natural father of a child.

Nkiru has sole parental responsibility for James. Nkiru has been enjoying family life as defined under Article 8 of the European Convention on Human Rights (ECHR) with a child who is a British citizen and has lived in the UK continuously for 7 years.

The key legal considerations in this case are s55 Borders, Citizenship and Immigration Act 2009 which imposes a duty to ensure the protection and the safeguarding of children and their welfare. The rights under Article 8 of the UN Convention on Rights of the Child are particularly relevant where the child has sufficient connections outside the family unit so as to have an established private life.

In the alternative, Nkiru should be making representations to the Home Office to grant leave to remain for herself on the basis of her personal circumstances and/or otherwise on compassionate grounds.

Nkiru's removal to Nigeria would involve a drastic change in circumstances. The likely impact of removal would affect James' schooling and wellbeing as well as Nkiru's emotional and psychological wellbeing. Furthermore, the likely impact of removal would affect Nkiru's life chances in terms of lifestyle and career, which impacts on James' welfare if his mother is unable to meet his needs.

Nkiru is currently unemployed and living in very difficult circumstances with support from friends and the Christian community. Nkiru would not want to subject James to the reality of what might happen if they are removed from the UK and conditions she finds herself in at the moment.

It is not a practical or reasonable option for Nkiru to be removed from the UK and therefore an application to remain in the UK is appropriate. James is British and has built a strong tie and has integrated very well in the UK. He has got into the routine of the English way of life having lived in the UK since birth. He attends school at St Kilroy's Anglican Primary School. If Nkiru'sleave to remain was refused and he was removed from the UK he would lose all the ties and relationships he has built in the UK. This would not be reasonable in accordance with VW (Uganda) v SSHD [2009] EWCA Civ 315

It is clear that Nkiru's immigration history is precarious, but James should not be blamed and punished for Nkiru's immigration history particularly as he is not responsible for Nkiru's conduct.

Requirements for making an application
The rules under Appendix FM provide a route to enter and remain in the UK for those with family life. The eligibility requirements under Appendix FM include relationship, financial, English language and immigration status.

In the case of Nkiru there are a number of exceptions to the eligibility requirements for leave to remain as a parent.

Section EX: Exception for leave to remain as a parent under Appendix FM
EX.1. These exceptions are as follows, if:

a) the applicant has a genuine and subsisting parental relationship with a child;
b) the child is under the age of 18 years and is in the UK;
c) the child is a British citizen or has lived in the UK continuously for at least the 7 years immediately preceding the date of an application;
d) it would not be reasonable to expect the child to leave the UK.

Where the exceptions apply Nkiru will only have to meet the suitability and relationship requirements of Appendix FM. The basis of the exception reflects the Home Office's view in discharging its duties under Article 8 and s55 of the Borders, Citizenship and Immigration Act 2009 with regards to the duty to safeguard and promote the welfare of children.

Exemption
The Immigration Rule A320 exempts a private life application from most general grounds of refusal in Part 9 of the rules.

The financial, English language and immigration status requirements will NOT apply.

Nkiru can rely on the exceptions above as an illegal entrant and if successful she and James will be granted 30 months within the rules on a 10 year route to settlement.

The type of application Nkiru should be making should be on form FLR (FP). This form is for those relying on the Exception.

Question 2

Habib should be advised that his mother Sindija should be making an application for entry clearance as an adult dependent parent of a person present and settled in the UK under Appendix FM of the Immigration Rules.

Applications under this category are very difficult to succeed without a cogent argument supported by evidence. The relationship requirements must be met under E-ECDR.2.1. The applicant must be either the:

a) Parent aged at least 18 years of the sponsor;
b) Grandparent of the sponsor;
c) Brother, sister, son, daughter (aged at least 18 years) of the sponsor.

The sponsor is the person who is present and settled in the UK. The sponsor's parents or grandparents must not be in a subsisting relationship, unless the other partner is also the parent or grandparent of the sponsor. A parent can also include a step parent.

The sponsor must be over 18 years of age, British or present and settled in the UK, or a Refugee with leave to remain as a refugee or under humanitarian protection.

There is no longer a requirement that the applicant lives alone. The threshold requirement under E-ECDR2.2 is that the applicant requires long-term personal care due to age, illness or disability which is unavailable and that there is no person in their home country who can reasonably provide such care or that such care is unaffordable.

The evidence required to support and application must be independent. The type of evidence required includes:

a) Birth certificate, adoption certificate, or other documentation which will show the family relationship between the applicant and the sponsor.
b) Evidence from medical, health professional or social workers that as a result of the applicant's age, illness or disability, the applicant will require long–term independent care and support.
c) Evidence of lack of financial means to provide the required level of care in the country where the applicant resides.
d) Where there has been pre-existing care arrangement, evidence to show why the previous care arrangement is no longer viable and why.
e) Any records of previously paid care arrangement and why it cannot continue.
f) An undertaking given by the sponsor to be responsible for the maintenance and accommodation of the applicant, usually for 5 years.
g) A care plan.
h) Bank statements from the sponsor covering a period of at least 6 months, to show availability of funds to care for the applicant.
i) Evidence of adequate accommodation to support the applicant in the UK.
j) Details of Income, employment letter, payslips savings covering a period of at least 6 months.
k) Evidence to show that the applicant will not rely on public funds.

Applications of this type are usually made on form FLR(O). Applications under this category must be made outside of the UK.

An applicant who successfully applies under this category will be granted Indefinite Leave To Remain (ILR). However, the undertaking given by the sponsor that the applicant will not have recourse to public funds remains for 5 years from the date of entry.

Applicants who rely on sponsors who themselves have limited leave to remain as a Refugee or under the Humanitarian Protection route will be given leave in line with their sponsor. They will only be eligible to apply for ILR at the same time as their sponsor. The undertaking signed by the sponsor will only have to be signed at the applicant's ILR stage for 5 years.

Question 3(a)

The requirements which Alborz must meet for the purpose of study in the UK can be found at Rule 245ZT of the Immigration Rules.

Alborz will need to provide evidence that he has been offered a place on a course at a UK institution and that he has enough financial means to support himself and pay the course fees, He must prove his knowledge of the English language and he must meet the following eligibility requirements:

- A valid Certificate of Acceptance of Studies (CAS) is required from a licensed sponsor.
- Evidence of meeting the maintenance requirement is required.
- An assessment by the sponsor confirming that the applicant meets the English language requirements before the issuance of a CAS document.
- The Home Office may require the applicant to attend an interview to show proficiency in English and that they are genuine.
- Failure to attend a required interview is a mandatory ground for refusal unless there are mitigating circumstances (r320 (7D)).

Only evidence which was submitted at the time of the application can be considered when the decision is to refuse a student visa.

General requirements and restrictions

In considering the requirements for a student visa, there are a number of general requirements that must be satisfied as laid out in Part 6A of the Immigration Rules. These include:

- The age of the applicant: The applicant must be 16 years or over. Where the applicant is a under this age, consent from the parents must be provided. Alborz is 22 years old so he satisfies this requirement. He will need to provide a copy of his birth certificate.

- Security clearance: There are certain courses and disciplines, which require a valid certificate from the Counter-Proliferation Department of the Foreign and Commonwealth Office. This certificate is called the Academic Technology Approval Scheme (ATAS) clearance certificate.

- The list of courses affected by this scheme can be found in Appendix 6 of the Immigration Rules. The course Alborz has applied for (Material

Science) is affected by the ATAS scheme. Iran is not a specified country classed as low risk, therefore he will need to apply to the relevant foreign office department for a valid ATAS certificate.

- As Alborz is an Iranian citizen and there has been some political and economical tension in Iran which affects UK national security, there may be some challenges in obtaining a certificate for Alborz to study his desired course in the UK.

- The list of low risk countries can be found in Appendix H of the Immigration Rules.

Alborz is able to work for a maximum of 20 hours per week in term time and more during the holiday.

He will also have to pay the immigration healthcare surcharge as part of a Tier 4 (General) student visa.

Duration of visa given

Where the decision is to grant a student visa, the visa is granted for the full duration of the course with extra time included. There is, however, a maximum length of stay as a student for a degree level course.

- For those studying at degree level or above there is a 5 years maximum. The exception to this limit applies to those studying for a Masters degree having successfully completed an undergraduate course. The limit is set at 6 years.
- Alborz is applying to study at undergraduate degree level. The duration of his course is 4 years. So if his visa is granted he will be given a 4 years visa. The maximum time Alborz can stay in the UK as a student is 6 years.

English language requirements

For degree level and above, the Higher Education Institution approved by the Home Office must test prospective students at the equivalent to CEFR (Common European Framework for languages) level B2.

Genuine student requirement

- Alborz is applying to study at undergraduate degree level. The duration of his course is 4 years. So if his visa is granted he will be given a 4 years visa. The maximum time Alborz can stay in the UK as a student is 6 years.

Duration of and condition of leave

- Alborz is applying to study at undergraduate degree level. The duration of his course is 4 years. So if his visa is granted he will be given a 4 year visa. The maximum time Alborz can stay in the UK as a student is 6 years. Alborz is applying for a course which is 12 months or more. The period of entry clearance to be granted before the course starts is 1 month.

- The period of entry clearance to be granted after the course ends is 4 months.

Maintenance requirements under Appendix C

- Alborz would be expected to show evidence that he is able to fund the full cost of his course.
- Alborz would need to show he has sufficient funds to support himself whilst studying. He would need to show that he has £1265 per month for

living costs of up to a maximum of 9 months, which is the required amount for Universities in London.
- Funds must be held for at least a consecutive period of 28 days before making his application.
- Given that the University of Oxbridge are offering to grant Alborz a full scholarship including living costs, this can be used as evidence of money that he has available.

Alborz is single therefore he does not need to show evidence of money to support partners or children.

Question 3(b)

An applicant will earn 30 points for Attributes if s/he was issued with a valid CAS. Appendix A of the Immigration Rules lays out the requirements that must be satisfied for the University of Oxbridge to issue a valid CAS:

- The University of Oxbridge must be an A-rated or a highly rated sponsor.
- Any CAS issued is valid within 6 months from an application for a Tier 4 visa been made. Only a licensed sponsor can issue a CAS.
- Application for entry clearance must be made no more than 3 months before the start of the course of study.
- A CAS cannot be used in a previously decided application.
- The CAS must contain all the relevant information with regard to the applicant and the course of study. These include course fees, study address, work placement requirements and how the applicant meets the English language skills.
- The Applicant must have met the English language requirements.
- The CAS can only be issued for a single course of study which leads to an approved qualification. A qualification is approved if it is:

    a) Validated by Royal Charter.
    b) Awarded by a body recognised by the Department for Business, innovation and skills.
    c) Recognised by one or more recognised bodies through a formal articulation agreement with the awarding body
    d) On the Register of Regulated Qualifications at National Qualifications Framework (NQF)/ Qualifications and Credit Framework (QCF) level 3 or above.
    e) Accredited at least at level 6 in the Scottish Credit and Qualifications Framework (SCQF) by the Scottish Qualifications Authority.
    f) An overseas qualification that UK NARIC has assessed as valid and equivalent.
    g) A qualification covered by a formal agreement between a UK recognised body and another education provider or awarding body
- It must be issued for a full time course at degree level or a full time course requiring a minimum of 15 hours per week.
- It must be issued for a course which represents a genuine academic progress i.e. above or complementing the level of a previous course for which the applicant was granted leave to remain as a Tier 4 student.

Question 4

This question relates to the rights of family members to join EU national workers in the UK under Articles 2, 3, 6 and 7 of Directive 2004/38/EC. Also, to the provision under Reg 8 of the Immigration (European Economic Area) Regulations

2006 ('the 2006 Regulations') relates to a durable partner of an EU national and is equivalent to the 'unmarried partner' route under the Immigration Rules.

In deciding an application under Reg 8 - durable relationship, the Home Office would normally apply the rule of thumb of two year's cohabitation. However, there is no EU law definition of a durable relationship and 'durability' does not require cohabitation to have existed.

Article 2 - defines an EU citizen and a family member.

Article 3 – applies to all EU citizens with regard to free movement and the right to reside in a Member state and to their family members.

Article 6 – extends the general right of residence for 3 months to family members whether or not they are EU nationals.

Article 7 – provides family members of those qualified to reside for longer than 3 months. Josephine is currently working and has the right to long-term residence.

Facilitating Entry for Family Members

Regulation 8 - facilitates the entry and residence of other family members who are dependent on, or members of the household of, the EU citizen in the UK or where serious health grounds make them dependent.

- Rahman [2012] – there is no need for the applicant to have lived with the Union citizen in the household abroad, or to have been dependent while the Union citizen was still living in the member state, but the dependency itself or the household membership must have arisen before the family member moved to the host state.
- Confirmed in Oboh and others [2013].
- If the rights of the qualified person cease, the family member will lose secondary rights OA [2007]

Retained Rights of Residence

In some situations, family members of EU citizens might acquire independent rights of admission or residence in the UK where their EU citizen connection is lost.

Articles 12 and 13 2004/38/EC and Regulation 10 of the 2006 Regulations permit EU citizens to retain rights of residence in the following situations:

- Where a qualified person has died or their relationship with the EU citizen has ended in divorce.
- In certain situations where the qualified person ceases to be qualified
- The family member of a EU citizen will not lose their rights to remain in the UK in the following circumstances:
  (a) Where the qualified person dies and the family member has resided in the UK for at least one year (Reg 10(6)).
  (b) Where the family member is he child of a qualified person who has died or left the UK where the family member has been attending an educational course(Reg 10(3)).
  (c) Where the family member is a parent with custody of a child (Reg 10(4)).
  (d) Where the family member ceased to be a family o member of a qualified person on divorce if the relevant conditions are satisfied

under Reg 10(6). Only a decree absolute is capable of dissolving a relationship for the purposes of EU law.

Karim was previously married to Alexis who is a German citizen but he is now divorced from her according to German laws. This is not a case where Karim as a former family member of EEA citizens might have acquired independent rights of admission or residence in the UK when he lost his family connection to Alexis through divorce. Karim may have been entitled to retained rights of residence if Alexis was during the relevant period exercising her Treaty Rights in German under the Surinder Singh principle. This is not stated in the facts.

The facts state that Karim does not have German citizenship or any entitlement to live in Germany and if this is the case Karim will also not have any entitlement in the UK under EU law on the basis of his previous marriage to Alexis. Karim will need to apply on the basis of his relationship with Josephine to join her in the UK.

Karim and Josephine will need to provide evidence to show that their relationship is durable and has existed for at least 2 years. A durable relationship for less than 2 years can still be acceptable if there is sufficient evidence to support it.

Under the Immigration Rules, a spouse is not permitted to enter or remain in the UK on the basis of a marriage or a subsisting relationship to their sponsor if the sponsor is also spouse to another person. Only one husband or wife from a marriage is allowed to enter or remain in the UK.

The minimum age for both Karim and Josephine is 18 years at the time of application.

The types of evidence that Karim and Josephine will need to prove their relationship is genuine and durable are as follows:

- Evidence of cohabiting.
- A statement from Karim and Josephine giving full details of their relationship and their future intentions.
- Photographs and evidence of any ceremony and times spent together as partners.
- Travel tickets, holidays together, phone records, emails, social media, cards and plane tickets.