CILEx CHARTERED INSTITUTE OF LEGAL EXECUTIVES

LEVEL 6 - UNIT 8 IMMIGRATION LAW
SUGGESTED ANSWERS – JUNE 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 June 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

Immigration control is a system of identifying and managing people who want to enter the UK. Terms and conditions of entry are defined on the basis of nationality, length of time and reason that they want to enter the UK. For example, the system of control for EEA citizens is different from the system of control for non-EEA citizens. The Immigration Act 1971 is the main piece of legislative framework, which deals with immigration law. The 1971 Act has been substantially amended by subsequent statues to arrive at the current system of control including the recent Immigration Act 2014. The Immigration Rules define the rules for entry to and remaining in the UK for those subject to immigration control. The Secretary of State is empowered by section 3(2) of the 1971 Act to make and amend the Immigration Rules.

Entry to the UK as a visitor is entry for temporary purpose and does not give rise to settlement. Most visit visas are for a maximum stay of six months and different conditions are attached to the leave, depending on the category of the visit. The Immigration Rules affecting visitors into the UK were extensively reviewed in April 2015. There are now 4 broad routes to short-term visits to the UK and these routes include:

Standard Visitor

The standard visitor visa replaced the following short-term visas family visitor visa, general visitor visa, child visitor visa, business visitor visa, including visas for academics, doctors and dentists, sports visitor visa, entertainer visitor visa, prospective entrepreneur visa, private medical treatment visitor visa and approved destination status (ADS) visa.

There are core requirements prescribed under the Immigration Rules (V4.2 – V4.10). Applicants applying for a standard visit visa must show evidence that they will leave the UK at the end of their visit. Applicants will also need to prove that they are genuinely seeking entry for the permitted purposes and that they will not undertake prohibited activities. A standard visitor can usually stay in the UK for up to 6 months but in certain situations can stay up to 11 months for private medical treatment or 12 months on academic on sabbatical and coming to the UK for research.

Marriage/Civil Partnership Visitor

This type of visa enables visitors who wish to travel to the UK to get married and then return back to their home country. Entry clearance is mandatory, which means that all applications of this type must be made from the applicant's home country. To satisfy the requirements under this type of visa, applicants must show evidence that their marriage has been planned for the period of their visit. This visa is not suitable for applicants wishing to remain in the UK after marriage.

Applicants applying for this type of visa must first meet the standard visitor requirements and are required to give notice of marriage or civil partnership or to actually marry or form a civil partnership and that the arrangements are not a sham Immigration Rule (V6.3).

Similarly, a marriage/civil partnership visitor can usually stay in the UK for up to 6 months. Extensions beyond 6 months may be granted at the discretion of the Home Office in exceptional circumstances but only for the duration for which the marriage is to take place.

Permitted Engagements Visitor

This type of visa enables those intending to do one of the permitted paid engagements as prescribed in Appendix 4 of the Immigration Rules. Applicants applying for this type of visa must first meet the standard visitor requirements and must not participate in any prohibited activities by way of work, receiving remunerations, receiving non-private medical treatment and marrying or forming a civil partnership.

The following are permitted paid engagements extracted from Appendix 4:

(a) an academic who is highly qualified within his or her field of expertise may examine students and/or participate in or chair selection panels, if they have been invited by a UK Higher Education Institution or a UK based research or arts organisation as part of that institution or organisation's quality assurance processes.

(b) An expert may give lectures in their subject area, if they have been invited by a UK Higher Education Institution; or a UK based research or arts organisation provided this does not amount to filling a teaching position for the host organisation.

(c) An overseas designated pilot examiner may assess UK based pilots to ensure they meet the national aviation regulatory requirements of other countries, if they have been invited by an approved training organisation based in the UK that is regulated by the UK Civil Aviation Authority for that purpose.

(d) A qualified lawyer may provide advocacy for a court or tribunal hearing, arbitration or other form of dispute resolution for legal proceedings within the UK, if they have been invited by a client.

(e) A professional artist, entertainer, musician or sports person may carry out an activity directly relating to their profession, if they have been invited by a creative (arts or entertainment) or sports organisation, agent or broadcaster based in the UK.

Transit Visitor

This type of visa enables those seeking to travel via the UK to another country outside the common travel area. This excludes crew members of ships and aircraft (V7.1, V7.3). Those who are on transit but do not pass through the UK border may need Direct Airside Transit Visa. The requirements for a transit visa are that the traveller must genuinely be in transit and passing through a reasonable transit route, they must not access public funds or receive medical treatment or work or pursue a course of study. Those with transit visit visas must leave within 48 hours of arrival. Otherwise if a traveller holds leave to enter on i.e. those on transit without a visa, they must meet additional requirements which include leaving by the UK 23:59 the day after arrival.

Question 2(a)

Under the Tier 2 skilled workers category at Immigration Rule 245H, a UK employer can recruit non-EEA workers to fill vacancies that cannot be filled by British or EEA workers. A non-EEA migrant worker must work in employment for which they have been sponsored.

Section 6(1) of the British Nationality Act 1981 ('the BNA 1981') defines the process of becoming a British citizen through naturalisation for non-spousal cases.

To become a British citizen, a Tier 2 skilled worker would need to have first been granted Indefinite Leave to Remain (ILR) for the year leading up to the application for naturalisation.

The criteria for naturalisation as a British citizen are set out as follows:

An applicant must be in the UK on the first day of the 5 years period which ended on the date the application for naturalisation was made.

An applicant must meet the minimum period of residence. During the initial period of residence, the applicant must not have been outside the UK for more than 450 days and during the last year of residence, the applicant must not have been outside the UK for more than 90 days.

To obtain ILR (settlement), a non-EEA migrant worker who was granted leave under Tier 2 prior to 6 April 2011, they will need to have a minimum continuous lawful residence of at least 5 years and provided their employer still holds a sponsor licence. A non-EEA migrant worker who was granted leave after this date can only apply for settlement after 5 years if they are earning a minimum income of £35,000 or are in a job on a shortage occupation list or are in a PhD-level job. The minimum income depends on the date of application. A non-EEA migrant worker who does not meet this requirement will be restricted to a 6 years maximum period in the UK and will not be allowed to return under Tier 2 for a minimum of 12 months. A non-EEA migrant worker applying for settlement

must be paid at or above the appropriate rate for the job as stated in the Codes of Practice in Appendix J of the Immigration Rules.

In addition to the requirements of length and continuous residence, the applicant must not have been present in the UK unlawfully in the 5 years leading to the application for naturalisation. The applicant must be of good character, have sufficient knowledge of the English, Welsh or Scottish Gaelic language and of the life in the UK. The applicant must also intend to make the UK their principle home.

Question 2(b)

Good character is not defined under the BNA 1981. As there is no statutory guidance, the Home Office is at liberty to determine what it constitutes as a good character. Accordingly, the Home Office requires all convictions, cautions, warnings, reprimands including motoring offences, bankruptcy, immigration related offences, civil orders to be disclosed. The good character requirement also extends to children over the age of 10. The consequences are grave for failure to disclose convictions and in many cases would result in refusal of the application and a subsequent refusal of any application for citizenship if it is made within 10 years from the date of the refusal, unless the failure to disclose was unintentional and relates a one-off non-custodial sentence or out of court disposal.

Under section 4 of the Rehabilitation of Offenders Act 1974, certain immigration and nationality decisions including good character decisions are exempt. This means that it is irrelevant that an applicant has a spent conviction when assessing good character. Criminal convictions imposed outside the UK are treated the same way as those imposed in the UK, except where crimes committed abroad are not regarded as crimes in the UK. In this situation the Home Office has the discretion to disregard them.

The Home Office will not consider an applicant as a good character in the following circumstances:

- Where an applicant has not respected or is willing to abide by the laws in the UK, an application for British citizenship will normally be refused. The requirement to be of a good character is referred to under section 41A of the BNA 1981. However, there is no statutory definition of what it means to be a good character. If an applicant has been convicted of a crime and sentenced for 4 years or more imprisonment, an application for British citizenship will normally be refused regardless of when the applicant was convicted. Where the sentence of imprisonment is less than 4 years but more than between 12 months, an application will normally be refused if it was made within 15 years from the end of the sentence. Sentences of up to 12 months imprisonment will normally be refused unless 10 years has lapsed since the end of the sentence. All other court disposals or non-custodial sentences will result in an application being refused if made within the last 3 years of conviction.

- Where an applicant has been involved with war crimes, crimes against humanity or genocide, terrorism or other actions that are considered not to be conducive to the public good, an applicant would not be considered as a good character and any application made for British citizenship will normally be refused.

- An applicant may be regarded as not being of a good character where their financial affairs are questionable. Failing to pay taxes or where the applicant is unable to meet their debts and has had a bankruptcy order made against them.

- Where the standing of an applicant in their local community is in serious doubt or the applicant has been deliberately dishonest or deceptive in their dealing within the community and assisting in the evasion of immigration control, the applicant may not be deemed as a good character.

The Home Office has the discretion to deem an applicant not to be of a good character if there are any doubts about their character and behaviour.

Question 3(a)

The Home Office has powers to remove a person in the interests of maintaining effective immigration control.

Powers to Remove

The powers or removal is created under section 1 of the Immigration Act 2014 (IA), which repeals and amends the old law under section 10 of Immigration and Asylum Act 1999 (IAA). A person removable under the amended section 10 powers of removal is not an appealable immigration decision.

The Home Office will normally exercise its powers to administratively remove a person who has no leave to enter or leave to remain in the UK where that person is an illegal entrant or has breached the conditions of his or her leave. 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. A person removed from the UK is barred from entering the UK for a 10 year period under the Immigration Rule 320(7B). A person removed from the UK may seek to return under Appendix FM under the Immigration Rule A320.

Under the old law, a decision to remove was first made and if there was no appeal lodged or an appeal was determined against the appellant, the Home Office would set removal directions. Under the current law, removal decisions are no longer required instead removal directions are issued by the Home Office followed by a removal notice stating the date and details of removal.

A person liable to be removed has up to 3 months from the date of receiving a removal notice. Where a person is not detained, a 7 day notice period is given in which to seek legal advice before the 3 months removal window commences. Where a person is detained, there is usually a minimum of 72 hour period in which to seek legal advice before the 3 months removal window commences.

The Home Office has a policy on administrative removals, which states that any notice of removal, if given, will be by way of courtesy. However, according to the case in Anufrijeva [2004] 1 AC 604 at 621, a decision that is not communicated has no legal effect.

If a notice of removal is served, previously granted leave becomes invalidated. There are some protection accorded to children and families under section78A of the Nationality, Immigration and Asylum Act 2002. There is also a requirement under section 54A of the Borders, Citizenship and Immigration Act 2009, for the Secretary of State to consult an independent Family Returns Panel to give recommendations on safeguarding children and families.

Question 3(b)

Detention must be lawful and the Home Office must provide reasons for detention at the outset. A failure to provide reasons renders the detention unlawful. The burden is on the Home Office to justify detention as necessary and this must be done to the ordinary civil standard of balance of probabilities.

The lawfulness of a decision to detain must be based on the statutory powers to detain as set out in Schedule 2 and 3 of the Immigration Act 1971 (as amended by section 10 of the 1999 Act because of the amendments introduced by the Immigration Act 2014) but there are limitations on the use of such powers. These powers allow the Home Office to detain a person in order to examine their suitability for entry into the UK, if a person is pending being removed from the UK, if a person is pending being deported and if a person is a crew member.

Factors to Consider

The list of factors justifying detention is set out in the Enforcement Instructions and Guidance (EIG) 55.1.1 document. The EIG sets out the necessity to consider initial or continued detention in the following circumstances:

- Whether the likelihood of a person being removed is known and if so after what timescales;
- Whether there are any evidence of previous absconding;
- Whether there are any evidence of a previous failure to comply with conditions of temporary release or bail;
- Whether there has been a determined attempt by the person to breach the immigration laws;
- Whether there is a previous history of complying with the requirements of immigration control;
- What ties exists in the UK. Are there any close relatives in the UK? Are there any dependants in the UK that rely on the person's support? Does the person have a private and family life in the UK?
- What are the person's expectations about the outcome of the case? Are there factors such as an outstanding appeal, an application for judicial review or representations which afford incentive to keep in touch;
- Whether there is a risk of offending or harm to the public ;
- Whether the person is under the age of 18
- Whether the person has a history of torture;
- Whether he person has a history of physical or mental illness.

In certain circumstances as set out in section 62 of the Nationality, Immigration and Asylum Act 2002, a person will remain liable to detention where the Home Office is deciding whether to remove a person. A person will remain liable to detention even if they cannot currently be detained due to legal challenges, practical difficulties or demands on resources preventing removal.

Question 4

Article 21 TFEU sets out a primary and individual right for citizens of the EU to move and reside freely within the territory of the Member state, subject to the limitations and conditions laid down in the Treaty and to the measures adopted to give it effect. This right is conferred directly on EU citizens by the Treaty.

Article 6 of the Directive 2004/38/EC (the Citizens' Directive) provides for 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.

The case of Metock and Ors v Ireland (Case C- 127/08) is a landmark case involving four applicants who applied for political asylum in Ireland and failed. The failed asylum seekers were nationals of non-Member countries who then married EU citizens. Their spouses were not Irish nationals but resided in Ireland. The failed asylum seekers applied for EU residence cards but were refused on the grounds that they did not satisfy the conditions of prior lawful residence in another Member state, as laid down by Irish law. The High court in Ireland referred the case to the European Court of Justice after finding that none of the marriages were marriages of convenience.

The matter before the European Court of Justice was to establish whether the Directive precluded legislation of a Member state, making the right of residence of a national of a non-member country, who is a family member of an EU citizen, subject to the conditions of prior lawful residence in another Member state. The implication of this is that those who are in the UK irregularly, even those who are removable under UK law and facing removal, will gain a right to reside on becoming a genuine family member of an EU citizen exercising Treaty Rights.

The European Court of Justice determined that the Directive does not make its application conditional on a national of a non-member country, who is a family member of an EU citizen, having previously resided lawfully in the host Member state as stated in Article 3(1) of the Directive.

The European Court of Justice also determined that a national of a non-member country who is a family member of an EU citizen, who accompanies the EU citizen to or joins the EU citizen in the host Member state, may enjoy the rights conferred by the Directives 2004/38/EC irrespective of when and where their marriage took place and how the national of a non-member country entered the host Member state. It is irrelevant whether a national of a non-member country, who is a family member of an EU citizen, has entered the host Member state before or after becoming a family member of that EU citizen.

The European Court of Justice also determined that the rights bestowed by EU law cannot be conditional on a national of a non-member family member of an EU citizen to physically accompany that EU citizen from one country to another. However, under the provisions of the Directive, Member states may restrict the right of entry and residence of an EU citizen and their family members on the grounds of public policy, public security or public health. This means that the Home Office may refuse to issue, revoke or refuse to renew a registration certificate, a residence card and a document certifying permanent residence, or a permanent residence card, if the refusal or revocation is justified on any of the above mentioned grounds.

The protection accorded under EU law is strengthened with the period of residence in the UK under section 21 of the Immigration (European Economic Area) Regulations 2006. For example, the grounds for removals and exclusions are narrowed from public policy, public security or public health for a residence of less than 5 years, to public policy and public security for a residence of 5 years or more but less than 10 years, to only public security for residence of 10 years or more. The protection accorded for residence of 10 years or more only applies to EU citizens.

Article 35 of the Directive also allows a Member state to take measures to penalise those who abuse or attempt to abuse the rights bestowed by EU law.

The rights bestowed by EU law do not extend to a party involved in a marriage or civil partnership of convenience.

SECTION B

Question 1(a)

There are two legal routes that may be available to Jonathan and Mohammed if they wish to relocate to the UK. The first operates under EEA law as interpreted by the Immigration (European Economic Area) Regulations 2006 and the second under domestic British law as interpreted under Appendix FM to the Immigration Rules. In both cases Mohammed can accompany Jonathan, work and study in the UK.

Under domestic British law as interpreted under Appendix FM to the Immigration Rules, a British partner and his or her non-EEA spouse must meet the suitability criteria, financial, English language and immigration status requirements. There are no such requirements under EU law.

The process under this route is lengthy and requires substantive evidentiary support, including meeting the financial requirements. If Mohammed is granted entry clearance as Jonathan's spouse, in accordance with Appendix FM, he would be required to extend this leave at the end of the initial period of 2.5 years granted. After 5 years, Mohammed would be in the position to apply for indefinite leave to remain so long as the marriage remains subsisting and the other criteria under the Immigration Rules were met.

There will be cases that fall outside the Appendix FM route. Such cases will be considered entirely under Article 8 ECHR without recourse to the Immigration Rules. For example, a relationship where the non-EEA spouse has been excluded for suitability reasons will be considered under Human Rights grounds where it would be necessary to apply a proportionality test with regard to the exceptional circumstances guidance in order to be compatible with the Convention and in compliance with Huang v SSHD (2007).

Question 1(b)

Under the Surinder Singh principle derived from the case R (Secretary of State for the Home Department) v Immigration Appeal Tribunal and Surinder Singh [1992] 3 CMLR 358, a non-EEA national can accompany their spouse to the UK where their British national spouse has worked in another Economic Area Member State and then returns to the UK. This is because the British national spouse would be deemed to have triggered their EEA law rights by working in another EEA country. To satisfy the Surinder Singh principle Jonathan must meet the following requirements:

- That he resided in an EEA member state in this case Sweden and that he was employed but not on a casual or transient basis or self-employed. Jonathan has full-time for Deluxe pharmaceuticals for the last 5 years.
- That on returning to the UK Jonathan would be defined as a qualified person. The Immigration (EEA) Regulations 2006 set out a list of qualified persons which includes workers and in Jonathan's case, he qualifies as a worker.
- That Jonathan and Mohammed are married and have lived there together before returning to the UK.

On the basis of the above, Jonathan and Mohammed appear to satisfy the criteria under EEA law and this would be a quicker and simpler process than applying under domestic British law.

If Mohammed chooses to apply under EEA law, he should be advised to apply for a Family Permit before travelling. He would be required to provide proof of identity, proof of marriage to Jonathan as well as evidence that Jonathan is returning to the UK in accordance with the requirements of the Surinder Singh principle.

Once in the UK, Mohammed may apply for a residence card issued to a non-EEA national family member. This card confirms that Mohammed's rights to reside in the UK under EEA law. Being in possession of a residence card will satisfy the educational requirements of Mohammed's entitlement to study in the UK.

If Jonathan remains in the UK as a qualified person for a continuous period of 5 years and Mohammed remains a family member of Jonathan for the same period of time, Mohammed would be eligible to apply for a document certifying permanent residence.

Question 2

Azubike Okereke has Indefinite Leave to Remain (ILR) on the basis of his marriage to Carol. Azubike would therefore be viewed as being 'settled'. This term applies to an individual normally residing in the UK who has no limitations or conditions on their right to stay here. Azubike moved to Nigeria to take up a job which resulted in him remaining in Nigeria for over two years. Carol took divorce proceedings against him and ended their relationship. They have no children and the property is registered in both of their names. When a person with ILR leaves the UK, they should normally be re-admitted for settlement if certain criteria are met. These include:

- That they had ILR when they last left the UK.
- That they have not been outside the UK for more than 2 years (section 18 of the <u>Immigration Rules</u>).
- That they did not receive assistance towards the cost of leaving the UK.
- That they now seek admission to continue their settled life in the UK.

Under section 19 of the <u>Immigration Rules</u>, a person may be re-admitted into the UK after being outside of the UK for more than 2 years where prior to their absence, they have lived in the UK all their life. Under the Home Office guidelines, the factors to be considered in re-admitting a returning resident that has been absent from the UK for more than 2 years are as follows:

- The length of their original residence in the UK. Azubike arrived into the UK in 1996. Before moving to Nigeria to take up a job, he had lived in the UK for 17 years. Azubike has not lived in the UK all his life prior to leaving the UK.
- The time the applicant has been outside the UK. Azubike has been outside the UK since 2013, which means he has been away for about 3 years - 1 year more than the requirement stipulates.
- The reason for the delay beyond 2 years. The delay was due to his own wish to renew his job contract in Nigeria at the end of the initial contract of 12 months. He could have returned within 2 years but he choose not to but instead choose to renew his contract.
- Why the applicant went abroad and when he did what were his intentions. Azubike was offered a very lucrative job in Nigeria. Carol was not keen to

relocate to Nigeria. She remained in the UK but was supportive of his career. It would appear that his intentions were to return back to the UK because of his marriage. They both bought a property in the UK.

- The nature of the applicant's family ties in the UK. It would appear Azubike's marriage to Carol may have suffered as a result of his absence. Their marriage resulted in a divorce. They have no children together. It seems Azubike has no family ties in the UK. There is no evidence of Azubike visiting the UK to maintain his relationship with Carol.
- Whether the applicant has a home to return to in the UK and if admitted whether the applicant would resume their residency. It would appear that the property Azubike and Carol bought is currently in both names. However, this may not continue to be the case as they are now divorced and part of the divorce process may require that they sever any property ties.

Further to the above, it follows that the longer a person with ILR has been outside the UK, the more difficult it is for them to be re-admitted into the UK. Where a person with ILR is outside the UK for more than 2 years, that person's leave automatically lapses by operation of law, and they would be required to seek leave to enter on return. This will not be automatically granted.

Question 3(a)

Since 9 July 2012, a financial requirement was introduced for those applying for entry clearance, leave to remain or Indefinite Leave to Remain (ILR) in the UK as a non-EEA national partner or dependent child of a person who is

- British, or
- Present and settled in the UK, or
- In the UK with refugee leave or humanitarian protection.

Under Appendix FM any application for entry clearance as a partner will need to meet the gross annual income set out in E-ECP 3.1, which requires that the applicant's partner must earn an income of £18,600 where there are no dependent children. There is an additional income where there are dependent children. For the first dependent child, there is an additional income requirement of £3,800 and a further additional income of £2,400 needed for each additional child. This amount can be met from income alone or in combination with specified savings.

Under Appendix FM, a child is a person who is a dependent of the applicant and under the age of 18, or who was under the age of 18 when the applicant was first granted entry to the UK, and is applying for entry clearance as a dependent of the applicant. Alternatively if the dependent has limited leave to enter or remain in the UK and is not a British citizen or settled in the UK and not EEA national with a right to be admitted under EEA Regulations 2006 they can also apply as a dependent.

Category A of the financial requirement for an overseas sponsor will apply where the sponsor is returning to the UK with the applicant to work and the sponsor has been in current overseas employment at the date of application for at least 6 months.

The overseas sponsor must have been paid throughout the 6 month's period, at an amount meeting or exceeding the specified income, and must have a confirmed job offer of salaried or non-salaried employment in the UK. The overseas salary must meet the relevant specified income.

Where the overseas sponsor receives a non-salaried income, the gross income must be calculated based on the rate or amount of pay and the standard or core hours offered to the sponsor to work.

Any offer must start within 3 months of the sponsor's return.

John has been earning a gross weekly income of £259 in the last year and his gross annual non-salary income is gross earnings held throughout 6 months divided by 6 multiplied by 12 months.

= ((26 weeks x 259) / 6) x 12
= (6734 / 6) x 12
= £13,468

John is currently earning a gross figure of £13,468 annually, so the shortfall is £5132 which is based on £18,600 - £13,468.

John can combine income with a savings amount above £16,000 held by him for at least 6 months prior to the date of an application and which is under his control.

At the entry clearance/initial leave to remain stage and the further leave to remain stage, the amount to be combined is savings above £16,000 is divided by 2.5 years. This reflects the initial leave period of 2.5 years being granted.

Only income from the sponsor is allowed for entry clearance. Third party support is not allowed.

John has a savings of £30,000, which he has had for 2 years. So the saving he can combine with his income is:

= (£30,000 - £16,000) / 2.5
= £14,000 / 2.5
= £5,600

John's combined gross annual is
= £13,467 + £5,600
= £19,067

John has a confirmed offer of a salaried income of £35,000 to start within 10 weeks of his return.

John earns a combined gross annual and savings of £19,067 and has worked as a Doctor overseas for 3 years. John has both current gross annual salary combined with his savings and a future starting salary which meet the financial requirement of £18,600 under Category A. As John and his wife do not have any children, they only need to meet the income threshold of £18,600. So John would be able to sponsor his wife and meet the financial requirement.

The advice would be different if John had been unemployed overseas for at least 8 months at the date of his wife's application. John can only rely on Category A and the income from a future job offer in the UK if, at the date of application, John had been in employment overseas receiving an income at the specified amount for at least 6 months.

Question 3(b)

Sources that can be used to meet the financial requirement applicable to John are listed in Appendix FM-SE as follows:

- Income from non-salaried employment. Category A – where a sponsor living and working overseas for an employer for 6 months or more.
- Payslips covering a period of 6 months.
- Letter confirming job offer in the UK, gross annual salary, starting date.
- Signed employment contract starting within 3 months of John's return to the UK.
- Savings held in cash in a personal bank /savings account in sponsor's and applicant's name or joint and in their control.
- Savings can be from a third party source including gifts from family.
- Sources of cash must be declared.
- Savings cannot be borrowed.
- Savings must be held for at least 6months.
- Bank statements covering the necessary periods are required.
- The bank where the cash is held should not be on the list of excluded institutions under the Rules.
- The bank should be regulated by the appropriate regulatory body in the country in which the bank operates.

Question 4

Becoming a British citizen is a significant event in a person's life and, in particular for children, it provides the opportunity for them to participate more fully in the life of their local community.

With the coming into force of the British Nationality Act 1981 on 1 January 1983, being born in the UK does not create any entitlement to citizenship unless there is a parental connection to a person settled in the UK.

There are situations where a child born in the UK to EEA and Swiss nationals will acquire British citizenship automatically, but this will depend on when the child was born and the activities of the parents or their status in the UK at the time of birth.

Where a child was born in the UK before 2 October 2000 to an EEA national parent, that child will be a British citizen if the parent was exercising EC Treaty rights at the time of birth.

Where a child was born in the UK on or after 2 October 2000 and on or before the 30th of April 2006 to an EEA national parent, they will only be a British citizen if the parent had indefinite leave to remain in the UK at the time of the birth. (This does not apply to retired EEA nationals or EEA nationals who are unable to work because of incapacity).

Where a child was born in the UK to an EEA national on or after 30 of April 2006 will be a British citizen if their parent had been in the UK exercising EC Treaty rights in accordance with the Immigration (European Economic Area) Regulations 2006 for more than 5 years or has indefinite leave to remain.

Children of EEA nationals born in the UK who missed out on becoming British citizens at birth may now have an entitlement to be registered as British citizens under section 1(3) of the British Nationality Act 1981, if the parent has since become "settled" in the UK. The parent will have become "settled" if: they have been granted indefinite leave in the UK, or they have been exercising EEA free

movement rights in the UK for a continuous period of five years ending on or after 30 April 2006.

The basis of freedom of movement is economic. Fredrick and Cecile will be deemed qualified persons. The Immigration (EEA) Regulations 2006 set out a list of qualified persons which include workers.

Marie was born on 10 March 2000 and at the time of her birth her parents Fredrick and Cecile were exercising their EC Treaty rights as workers. Marie is therefore a British citizen.

Bella was born on 20 April 2002 and, at the time of her birth, her parents Fredrick and Cecile were exercising their EC Treaty rights as workers for over 5 years. Under EEA Regulations, EEA nationals who lived in the UK for 5 years in accordance with EEA Regulations (Reg.15) will automatically acquire a permanent right of residence. Evidencing permanent residence is very onerous, but if Fredrick or Cecile can evidence a 5 years period of continuous residence exercising EC Treaty rights and they acquired permanent residence automatically at or before Bella's birth, Bella would be a British citizen.

Albert was born on 2 October 2007 and at the time of his birth his parents Fredrick and Cecile were exercising their EC Treaty rights as workers for over 5 years. Similar to Bella, Albert would also be a British citizen.