Appendix FM to the Immigration Rules: Adult Dependent Relatives

1. On 9 July 2012 new Immigration Rules, contained in Appendix FM, were implemented for non-European Economic Area (non-EEA) national adult dependent relatives (ADRs) of British citizens, persons settled in UK and those here with refugee leave or humanitarian protection. This note reviews the impact of those rules and looks again at possible alternative methods of controlling ADR immigration to reduce burdens on the taxpayer.

Background

2. The main aim of the new ADR rules is to reduce burdens on the taxpayer, in view of the significant NHS and social care costs to which ADR cases can give rise. The old rules essentially provided an expectation of settlement in the UK for a parent or grandparent aged 65 or over where they were financially dependent on their UK sponsor, subject to the provision by the sponsor of a five-year undertaking that they could maintain and accommodate the ADR without access to public funds.[1] A parent or grandparent under the age of 65, and other adult dependent relatives (a son, daughter, brother, sister, uncle or aunt) of any age, could apply to settle permanently in the UK in the most exceptional compassionate circumstances. The old rules allowed an application to be made in the UK, including while here as a visitor, as well as overseas.

3. Under the new ADR rules, an applicant must show that, as a result of age, illness or disability, they require long-term personal care to perform everyday tasks and that this can only be provided in the UK by their relative here. The route is limited to close family members aged 18 or over: a parent, grandparent, son, daughter, brother or sister, and to applications from overseas. Those who meet the new requirements continue to be granted immediate settlement (Indefinite Leave to Enter) if their sponsor is a British citizen or settled here, subject to the five-year undertaking by the sponsor that they will maintain and accommodate (and, under the new rules, care for) their relative without access to public funds.

4. The lawfulness of the new ADR rules was upheld in R (on the application of Britcits) v Secretary of State for the Home Department [2016] EWHC 956 (Admin) (20 April 2016). In paragraphs 1.40 to 1.42 of his judgment Mr Justice Mitting observed that:

- The new ADR rules had resulted in fewer applications succeeding than had been estimated.

[1] 'Public funds' is defined in paragraph 6 of the Immigration Rules and encompasses DWP benefits and social housing, but not the NHS or local authority social care. The average cost of residential care for older people in England in 2014-15 ranged from £595 per week in private sector residential care to £1,110 per week in local authority residential care (see https://www.gov.uk/government/publications/unit-costs-of-health-and-social-care--2). In circumstances where the sponsor was no longer able to care for their relative, who was then eligible for local authority-funded residential care, the cost to the local authority based on these figures could be between £92,820 and £173,160 over three years.

- The financial savings stemming from implementation of the new rules had been underestimated as a consequence.

- The June 2012 Impact Assessment had not taken account of the potential loss to the Exchequer of sponsors who might leave the UK because they could not bring their elderly parents to join them, particularly sponsors in the medical profession employed by the NHS.

- Alternative methods of avoiding the burden on the NHS and on local authorities were likely to be available in some ADR cases, e.g. medical and care insurance, the Immigration Health Surcharge introduced under the Immigration Act 2014 or a bond.

5. This note reviews the new ADR rules and their impact in light of those observations. In particular, it includes:

- Updated data, to the end of 2015, on applications and outcomes under the new rules.

- A recalculation of the financial savings achieved by the new rules.

- Consideration of the impact of the new rules on UK sponsors, particularly those employed by the NHS.

- Consideration of alternative methods of achieving the main aim of the new rules of reducing burdens on the taxpayer, particularly NHS costs.

Data on ADR applications and outcomes

6. Data on the number of ADR applications granted under the old rules and under the new rules are at **Annex A**.

Applications granted under the old rules

7. The best available data for ADR applications granted under the old rules are contained in the June 2012 Impact Assessment.[2] These suggest that, from 1 April 2010 to 31 March 2011, 2,325 ADR applications were granted: 969 on the basis of an out-of-country application and 1,356 in-country.

8. The 2010 figures contained in the July 2011 Family Migration: evidence and analysis document,[3] which suggest that there were 3,390 applications from 'Other elderly and dependent relatives' resulting in 2,665 grants, include some non-ADR applications.

[2] Changes to Family Migration Rules: Impact Assessment dated 12 June 2012: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257357/fam-impact-state.pdf.
[3] Family migration: evidence and analysis dated July 2011: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/306889/occ94.pdf.

Applications granted under the new rules

9. We have conducted four separate exercises since 9 July 2012 to obtain data on ADR applications (which are not separately captured in the published Immigration Statistics) determined under the new rules. Each exercise involved a manual review of individual applications. Consequently the information obtained is classified as 'provisional management information and subject to change'. Full details of each exercise are at Annex A.

10. The results can be summarised as follows:

- From 9 July to 31 October 2012, one ADR settlement visa was issued. (Exercise 1 conducted in November/December 2012)

- From 1 November 2012 to 30 September 2013, 34 ADR settlement visas were issued.
  (Exercise 2 conducted in October 2013)

- From 9 July 2012 to 31 December 2014, there were 2,330 ADR applications, 491 of which were granted:
  - 145 at initial decision.
  - 60 on appeal following a review by an Entry Clearance Manager (ECM).
  - 286 following an appeal allowed by the Tribunal.

  See Annex A for further breakdown by year.
  (Exercise 3 conducted in July to September 2015)

- The 2014 data were refreshed in respect of appeal outcomes. This showed that in 2014 of 723 ADR applications, 135 were granted:
  - 37 at initial decision.
  - 3 following a review by an ECM.
  - 95 following an appeal allowed by the Tribunal (updated from 30 in Exercise 3).

  Note that around 25 appeals were still ongoing.
  (Exercise 4 conducted in August to October 2016)

- In 2015, there were 452 ADR applications, 50 of which were granted:
  - 22 at initial decision.
  - 7 following a review by an ECM.
  - 21 following an allowed appeal.

  Note that around 150 appeals were still ongoing.
  (Also part of exercise 4 conducted in August to October 2016).

11. The data for 2013 and 2014 show that, once grants following ECM reviews and allowed appeals are taken into account, around 19% of ADR applications were granted in 2013 and 2014. The data for 2015 show that around 11% of ADR applications have been granted; this figure may increase once the outcome of the outstanding appeals is known.

Impacts of new ADR rules

Estimated impacts

12. The estimated impacts of the new ADR rules were set out at section 2.4 of the June 2012 Impact Assessment.[4] The figures in the June 2012 Policy Equality Statement[5] were used as a baseline and various assumptions were applied to these figures, such as the likely success rate of applications under the new rules and the number of applications which might be made out-of-country under the new rules rather than in-country. The existing downward trajectory of settlement applications was also taken into account. Overall, it was estimated that the new rules would result in a reduction of 281 ADR grants per annum leading to estimated NHS savings of £23 million over 10 years.[6]

Actual impacts

13. From 1 April 2010 to 31 March 2011, 2,325 ADR applications were granted under the old rules. As illustrated at Annex A, in the calendar years 2013 and 2014 the number of ADR applications granted was 189 and 135 respectively. Taking an average of 162, this is a reduction of 2,163 ADR grants per year compared to 2010-11. It should be noted that other factors, aside from rules changes, can also influence decisions by potential applicants whether to apply.

14. **Annex B** contains an estimate of NHS savings accruing from an average of 162 ADR applications granted per year, a reduction of 2,163 ADR grants per year compared to 2010-11. This suggests illustrative NHS savings of around £249 million over 10 years, noting the assumptions presented in Annex B and footnote 7.[7]

15. The main aim of the new ADR rules is to reduce burdens on the taxpayer, in particular NHS costs. The current indications are that the introduction of the new ADR rules has coincided with a substantial reduction in the number of ADR visas granted, which may also influence associated NHS expenditure. The change in volumes over the period since 9 July 2012 has been much greater than assumed in the June 2012 Impact Assessment, and if this continued and assumed NHS savings materialised, those savings (and other impacts considered) could be larger than previously assumed.

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[4] See footnote 2.

[5] Family Migration: Policy Equality Statement published 13 June 2012: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/294067/family-migration-statement.pdf

[6] The health savings were calculated using a base cost per person of £2,287 per year (see Annex 5 of the June 2012 Impact Assessment at footnote 2), assumed to increase by 2% each year owing to assumed inflation and with savings discounted in line with HM Treasury Green Book methodology.

[7] The assumed reduction of 2,163 grants per year is based on the average number of grants in 2013 and 2014 – assumed to be representative of annual grants across the 10-year period as compared to the number of grants in 2010-11. The estimated NHS savings over 10 years is an illustrative assessment (and actual NHS costs may differ from the assumed average), with account taken of inflation and discounting on the same basis as the June 2012 Impact Assessment. It is assumed that each individual would have remained living in the UK until the end of the 10-year period. Other factors, aside from rules changes, can also influence decisions by potential migrants whether to apply.

Financial impact

16. The June 2012 Impact Assessment[8] contained an assessment of the financial impact of the new ADR rules on application fee income and processing costs. This was included to comply with the standard approach to Impact Assessments: the potential impact on fees and processing costs was not a material consideration in developing the new rules, whose main aim was to reduce burdens on the taxpayer, in particular NHS costs. The assumptions applied in quantifying the impact of the new rules on fees and processing costs were intended to give a broad indication of the likely impact. Observed ADR applications have been lower than the estimates presented in the Impact Assessment, which means the Impact Assessment could have underestimated reductions in fee income and impacts on processing costs.

Impact on sponsors in the UK

17. In paragraph 1.41 of his judgment Mr Justice Mitting commented that "estimates…do not take into account the potential loss to the UK Exchequer of sponsors who might leave the United Kingdom to avoid the hardship and loss imposed on their family members by the refusal of leave to enter for their elderly parents". This was in reference to evidence from some NHS doctors that they were contemplating leaving the UK because they were unable to bring their elderly relatives here.

18. The British Medical Association responded to the July 2011 consultation on proposals for reform of family migration, including in respect of support for ADRs by UK-based relatives, and their response was given careful consideration. The impact of the new rules on UK sponsors, and whether they would be likely to leave the UK to join their ADR overseas, was considered when developing the new policy in light of the consultation and the responses to it. It was considered that any impact would be proportionate to the policy aim of reducing burdens on the taxpayer. The issue has been re-examined as part of this review. While it is acknowledged that some UK sponsors may choose to leave the UK as a result of the new ADR rules, including some who are in skilled employment, the impact remains proportionate to the policy aim.

19. It should be borne in mind that the number of NHS staff who support ADRs overseas is likely to be a very small proportion. The NHS in England employs more than 600,000 professionally qualified clinical staff.[9] This compares to a total of 2,325 ADRs granted settlement in the UK in 2010-11 under the old ADR rules.

20. There is no evidence to show that significant numbers of non-EEA national medical professionals have been deterred from applying to work in the UK since the new ADR rules were implemented. Tier 2 visa applications in the Human Health and Social Work Activities sector have more than doubled since 2012:

[8] See footnote 2.
[9] Healthcare Workforce Statistics England September 2015: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/511519/nhs-staf-2015-over-rep.pdf

	2011	2012	2013	2014	2015
Tier 2 Human Health and Social Work Activities	1,565	1,586	2,114	3,127	3,518

21. In addition, any impact of the ADR policy on NHS doctors is likely to decrease over the coming years. In his speech to the Conservative Party conference on 4 October 2016, the Secretary of State for Health noted the valuable contribution made to the NHS by overseas doctors, but he queried whether it was right to import doctors from poorer countries who need them. He made a commitment to train up to 1,500 extra doctors per year and that the NHS would be self-sufficient in doctors by 2020.

Alternative policy options

22. In paragraph 1.42 of his judgment Mr Justice Mitting stated that "Alternative methods of avoiding the burden on the National Health Service and on local authorities are likely to be available in some cases; for example, by purchasing medical and care insurance or a bond for which provision is made in other cases in section 38 of the Immigration Act 2014. Such provision could relatively readily be accommodated by a proviso drafted in appropriate terms to the current rule."

23. We have looked further at each of these alternative options, with particular reference to how far each would achieve the policy intention of reducing burdens on the taxpayer; be feasible to administer; and continue to allow an ADR with significant long-term personal care needs which cannot be met in their home country to join their relative in the UK.

Medical and care insurance

24. In July 2013, the Department of Health published a consultation paper on migrant access to the NHS.[10] This invited views on two methods for ensuring that migrants made a fair contribution towards NHS care: a health levy (subsequently implemented through the Immigration Act 2014 in the form of the Immigration Health Surcharge: see paragraphs 30-32, below) and a healthcare insurance scheme.

25. The government response to the consultation was published in December 2013.[11] In confirming the decision to take forward the Immigration Health Surcharge, this stated that "We believe an insurance model would have struggled to cover similar levels of care. In addition, it would be impractical to enforce health insurance as a solution for those who come here for more than a visit."

[10] Sustaining services, ensuring fairness: A consultation on migrant access and their financial contribution to NHS provision in England

[11] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/268630/Sustaining_services__ensuring_fairness_-_Government_response_to_consultation.pdf

26. The Impact Assessment: regulating migrant access to health services in the UK,[12] dated 11 October 2013, stated that:

> "In light of the consultation, we have considered a range of options, including the feasibility of introducing either a 'pay as you go' system of charging (through which all temporary migrants would be liable to NHS hospital treatment charges) or a requirement that migrants hold health insurance. Both of these options would however place significant administrative burdens on the NHS, which would face an increased challenge in recovering unpaid and disputed treatment charges.
>
> "The health insurance option would also prove significantly more expensive for temporary migrants when compared to a form of health levy. Most existing private insurance policies do not provide a satisfactory level of coverage for our purposes as they are supplemental to NHS care, relying on the NHS to provide cover for certain conditions as well as emergency care. To meet our requirements, insurance companies would need to develop new insurance packages capable of providing comprehensive private insurance that covered all eventualities, including maternity and emergency care. Anecdotal evidence from discussions with the insurance industry suggests this could cost the migrant around £3,000 per year in insurance premiums. Where migrants have existing health problems, comprehensive private health insurance could prove prohibitively expensive, giving rise to concerns about the compatibility of a mandatory health insurance policy with UK equality legislation. There is also a risk that some migrants could either cancel or fail to renew their insurance once in the UK; thereby raising the risk of bad debt to the NHS should they later require treatment that they are unable or unwilling to pay for".

27. These potential problems with a mandatory healthcare insurance scheme would be exacerbated in respect of ADRs, most of whom are elderly and many of whom have pre-existing health conditions. Private insurance, if obtainable, would be likely to be prohibitively expensive, especially if it were to cover NHS emergency treatment and/or social care and residential care.

28. If medical and social care insurance were mandatory for ADRs, those without substantial means, and without a close relative here with such means, would be excluded from the UK, including where the ADR required long-term personal care which could only be provided by their relative here and which could be so without recourse to public funds. Even where a requirement for such insurance was met at the date of application, it would offer no guarantee that the insurance would not be later cancelled or not renewed, including in circumstances outside the ADR's control, such as a significant deterioration in their health, or a change in the financial circumstances of their sponsor, which made the insurance unavailable or the premiums unaffordable.

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12 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/251972/Health_impact_assessment.pdf

29. The new ADR rules do not discriminate against ADRs or sponsors of limited means or against ADRs with the most severe care needs. They can be met by any ADR whose long-term personal care needs cannot adequately be met in their home country – including because they and their UK relative cannot afford to obtain the requisite level of care there – but can be met in the UK, together with their accommodation and maintenance, without recourse to public funds.

Immigration Health Surcharge

30. The Immigration Health Surcharge (IHS) was implemented in April 2015 under section 38 of the Immigration Act 2014. It applies to most non-EEA national migrants seeking limited leave to come to the UK or remain here for more than six months. It does not apply to those seeking settled status here (Indefinite Leave to Enter or Remain), who, if granted, then have free access to the NHS.

31. Without a change in the primary legislation, for ADRs to be required to pay the IHS, those who met the requirements of the rules could no longer be granted immediate settled status. The option of ending immediate settlement for ADRs, and requiring them to complete a five-year probationary period before being able to apply for settled status, was included in the July 2011 family migration consultation document.[13] In light of the consultation, however, it was decided that ADRs who met the requirements of the rules should continue to be granted immediate settlement because it gave them some security about their long-term future in the UK.

32. In any case, in light of NHS estimates that a person aged 65-74 costs the NHS £2,287 per year,[14] an IHS applicable to ADRs would likely need to be set at significantly more than its current level for family migrants (£200 per year) to provide any meaningful income for the NHS. Again, this would risk excluding from the UK all ADRs without substantial means, and without a close relative here with such means, including where the ADR required long-term personal care which could only be provided by their relative here and which could be so without recourse to public funds.

Bond scheme

33. A financial bond scheme – under which the ADR or their sponsor paid a substantial amount upfront, to be offset against the cost of any NHS care and perhaps local authority social care required – would give rise to the same concern over affordability and discrimination. Requiring an upfront payment of many thousands of pounds would by definition exclude those cases unable to pay it, regardless of the level of their personal care needs.

[13] Family migration: a consultation
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/269011/family-consultation.pdf
Family migration: response to consultation
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/275300/cons-fam-mig.pdf
[14] See Annex 5 of Changes to Family Migration Rules: Impact Assessment
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257357/fam-impact-state.pdf

34. Such a financial bond scheme would also be complex and costly to administer. For any unspent portion of the bond to be reimbursed after say five years, the NHS (and perhaps local authorities) would have to record, cost and offset all instances of the ADR accessing NHS (and perhaps local authority social care) services. This would place a significant administrative burden on them and on the Home Office, in establishing and administering such a scheme.

Conclusion

35. The new ADR rules provide immediate settled status in the UK, and free access to the NHS, to those ADRs whose long-term personal care needs cannot adequately be met in their home country and can be met here with the support of their sponsor, regardless of whether the ADR or their sponsor has substantial financial means. This reflects the policy intention of reducing burdens on the taxpayer while continuing to allow ADRs to settle here where their long-term personal care needs can only adequately be met in the UK by their sponsor here, without recourse to public funds.

36. The Home Office will continue to keep the operation of the new ADR rules under review, including in light of any further information and evidence about their operation, impact and possible alternatives. This can be sent to: FamilyOpsPolicy@homeoffice.gsi.gov.uk

Asylum & Family Policy Unit
Immigration & Border Policy Directorate
Home Office
8 December 2016

ANNEX A

Data on ADR applications and outcomes

Family migration: evidence and analysis: July 2011 (published alongside family migration consultation document)

Table 1: Volume of applications and outcomes, 2010

2010	No. applications	No. decisions	No. grants	No. refusals	No. other outcomes	Grant rate
Other adult and elderly dependants[1] (indefinite leave to enter)	3,390	4,120	2,665	1,440	15	65%

[1] includes some non-ADR applications

Changes to Family Migration Rules: Impact assessment 12/06/2012 (and Policy Equality Statement 13/06/2012)

See 2.4 of Impact Assessment under 'Impact' and Annex 5 of Policy Equality Statement.

April 2010 – March 2011	Granted ILE after applying overseas	Granted ILR after applying in the UK	Total
Parents/grandparents aged 65 or over	483	832	1,315
Parents/grandparents aged under 65	108	179	287
Other dependent relatives aged 65 or over	241	36	277
Other dependent relatives aged under 65	137	309	446
Total	**969**	**1,356**	**2,325**

Results of manual reviews of ADR data

Exercise 1: data relating to the period from 9 July 2012 to 31 October 2012

A manual review of settlement entry clearance cases was conducted at the end of November 2012/early December 2012 to establish the number of ADR applications that had been granted in the period from 9 July 2012 to 31 October 2012. The outcome of the review indicated that one settlement visa had been issued in that period to an ADR under the new rules.

Exercise 2: data relating to the period from 1 November 2012 to 30 September 2013

A second manual review of settlement entry clearance cases was conducted in October 2013 to establish the number of ADR applications that had been granted in the period from 1 November 2012 to 30 September 2013. The outcome of this review indicated that 34 settlement visas had been issued in that period to an ADR under the new rules.

Exercise 3: data relating to the period from 9 July 2012 to 31 December 2014

A third manual review of settlement entry clearance cases was conducted from July to September 2015. This sought to establish the overall number of ADR applications submitted, the number of ADR applications that had been granted (on initial consideration or following an entry clearance manager review or on appeal to the Tribunal in respect of a decision to refuse) and the number of ADR applications that had been refused, in the period from 9 July 2012 to 31 December 2014. The results are shown in the table below.

Period	ADR applications	Granted (Initial decision)	Refused	Allowed (ECM review/Appeal)	Withdrawn
09/07/12 – 31/12/12	637	71	566	161	0
2013	970	37	931	152	2
2014	723	37	685	33	1
Total	**2,330**	**145**	**2,182**	**346** **(60 ECM review / 286 Appeal)**	**3**

Exercise 4: data relating to 2014 and 2015

A fourth manual review was conducted in August to October 2016. First, the 2014 data were updated with the outcome of appeals determined after exercise 3 was completed in September 2015. The results are shown in the table below. Around 25 appeals were still ongoing.

Period	ADR applications	Granted (Initial decision)	Refused	Allowed (ECM review/Appeal)	Withdrawn
2014	723	37	685	98 (3 ECM review / 95 Appeal)	1

And second, a manual review of settlement entry clearance cases in 2015 was conducted. This sought to establish the overall number of ADR applications submitted, the number of ADR applications that had been granted (on initial consideration or following an entry clearance manager review or on appeal to the Tribunal in respect of a decision to refuse) and the number of ADR applications that had been refused, in the period from 1 January 2015 to 31 December 2015. The results are shown in the table below. Around 150 appeals were still ongoing.

Period	ADR Applications	Granted (Initial decision)	Refused	Allowed (ECM review/Appeal)	Withdrawn
2015	452	22	428	28 (7 ECM review / 21 Appeal)	2

Our analysis of the appeals allowed in respect of ADR applications under the new rules since July 2012 indicates that the appeal was generally allowed because, in light of the evidence before it, the Tribunal was satisfied that the new rules were met. We will reflect any lessons to be learned from this for our decision-making on ADR applications in the published guidance for entry clearance officers.

ANNEX B

NHS savings over 10 years

The annual reduction of 2,163 ADR grants has been calculated by comparing the number of ADR grants during the year ending 31 March 2011 (2,325) to the grants made during the calendar years 2013 and 2014 taken as an average (162).

NHS savings over 10 years – taking the average of grants in 2013 and 2014 as representative of grants across the 10-year period – have been calculated on the basis that each ADR grant costs the NHS on average £2,287 per year (based on NHS costs for 65-74 year olds as used in the June 2012 Impact Assessment).[15]

This is an illustrative assessment, with account taken of inflation and discounting on the same basis as the estimate of NHS savings in the June 2012 Impact Assessment. It is assumed that each individual would have remained living in the UK until the end of the 10-year period. Actual NHS costs which may have been borne are uncertain and it is noted these may differ from the assumed NHS costs used in this estimate and the June 2012 Impact Assessment.

Year	Cumulative reduction in ADR grants	Cumulative savings in NHS costs (£m)
1	2,163	4,946,363
2	4,326	9,749,518
3	6,489	14,411,921
4	8,652	18,936,724
5	10,815	23,327,822
6	12,978	27,589,902
7	15,141	31,720,687
8	17,304	35,727,258
9	19,467	39,609,598
10	21,630	43,371,657
Total		£249,391,450

[15] See Annex 5 of Changes to Family Migration Rules: Impact Assessment https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257357/fam-impact-state.pdf