

ILPA information sheet

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An archive of information sheets is available at www.ilpa.org.uk/infoservice.html

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Regulation of Immigration Advice and Immigration Services

23rd January 2012

Immigration advice and immigration services are regulated under provisions of the Immigration and Asylum Act 1999 (“the 1999 Act”). The provisions took effect in 2000. They are contained in Part V of the 1999 Act. This information sheet provides information about regulation under that Act.

General

The 1999 Act makes provision for the Office of the Immigration Services Commissioner (OISC). OISC is generally responsible for regulation of immigration advice and services. Before 1999, the giving of immigration advice other than by solicitors, barristers and legal executives was wholly unregulated. The Act makes it a criminal offence to give immigration advice or services unless permitted to do so by the Act. The Act applies to immigration advice or services “*in the course of a business whether or not for profit*”. It, therefore, applies to not for profit agencies, including charities. The Act does not apply to a friend or family member providing assistance in a personal capacity. However, for example, the Act would ordinarily apply to someone working (whether paid or as a volunteer) for an agency providing advice or support services.

Immigration advice and immigration services

Immigration advice and immigration services are defined in the Act. These include giving advice to an individual, or making representations for an individual to the UK Border Agency, a Minister, a tribunal or court, relating to any of the following matters:

- a claim for asylum
- an application for permission to come to or stay in the UK (including applications for entry clearance, leave to enter or leave to remain, or to vary any leave a person has)
- an application for an immigration employment document (i.e. any document relating to employment, and issued in relation to a person’s leave to enter or remain in the UK)
- unlawful entry to the UK
- British nationality law
- European free movement and citizenship law
- removal or deportation from the UK
- an application for immigration bail
- a claim for judicial review in relation to any of the above matters

Those permitted to provide immigration advice and services

The Act sets out that the following people may give immigration advice and services:

- someone who is registered to do so by OISC (see below)
- someone who is authorised to do so by a designated professional body (see below)
- someone who is exempted from regulation (see below)
- someone who satisfies equivalent requirements in a European Economic Area State
- someone who is acting for, and under the supervision of, any of the above

OISC registration

There are various requirements to be met so as to be registered by OISC. These include:

- agreement to be bound by the OISC code of standards and OISC rules
- having and maintaining appropriate knowledge and skills (see below)
- having access to resources and maintaining a training plan so as to be up to date on developments in immigration law and practice
- meeting continuing professional development requirements (e.g. attending training courses)
- having a complaints procedure
- professional indemnity insurance
- meeting various management and accounts requirements

There is a fee for registration. Those who do not charge for their services may be exempt from the fee. Being exempt from the fee does not permit exemption from the other requirements. As regards those who are exempt from registration, see below.

The knowledge and skills required for registration depends on the level of work the person wishes to do. There are three levels – initial advice; casework (not including advocacy); and casework (including advocacy before the immigration tribunals).

Designated professional body

The Act sets out who are designated professional bodies. This covers solicitors, barristers (including advocates in Scotland) and legal executives.

Exemption from regulation

The Act allows for some persons to be made exempt from regulation. Employers and educational institutions, who are licensed to sponsor migrants to work for or study with them, are exempted. This exemption, however, only permits them to assist the migrants they sponsor (and their family members) with immigration matters that are related to whether those migrants may work for or study with them.

Criminal offence and penalty

Section 91 of the Act provides that giving immigration advice or immigration services in breach of the Act is a criminal offence. However, there are a range of steps that may be taken against someone giving immigration advice or services when not permitted to do so. These include steps that fall short of criminal prosecution. If a prosecution is brought, and a person is found guilty of giving immigration advice or services when not permitted to do so, a fine or period of imprisonment (maximum of two years) can be imposed.

Further information

More information about OISC is available from the website at: <http://oisc.homeoffice.gov.uk/>