

Information sheets provide general information only, accurate as at the date of the information sheet. Law, policy and practice may change over time.

ILPA members listed in the directory at www.ilpa.org.uk provide legal advice on individual cases. ILPA does not do so.

The ILPA information service is funded by the Joseph Rowntree Charitable Trust.

An archive of information sheets is available at www.ilpa.org.uk/info-service.html

Zoe Harper, ILPA Legal Officer zoe.harper@ilpa.org.uk

Immigration Law Practitioners' Association www.ilpa.org.uk 020-7251 8383 (t) 020-7251 8384 (f)

27 June 2017

The regulation of immigration advice and immigration services

This information sheet explains how the provision of immigration advice and services is regulated and who may lawfully provide immigration advice and services.

The Immigration and Asylum Act 1999

Immigration advice and immigration services are regulated under provisions contained in Part V of the Immigration and Asylum Act 1999. These took effect in 2000. Before that date, only immigration advice given by solicitors, barristers and legal executives was regulated.

The Immigration and Asylum Act 1999 established the Office for the Immigration Services Commissioner (OISC) which has general responsibility for the regulation of immigration advice and services.

Section 91 of the Immigration and Asylum Act 1999 made it a criminal offence to give immigration advice or services unless permitted to do so by the Act.

What immigration advice services are regulated?

The Immigration and Asylum Act 1999 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, as well as to other advisers and businesses. The Act does not apply to a friend or family member providing assistance in personal capacity. The Act, however, 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 are defined in the Immigration and Asylum Act 1999. These include giving advice to an individual or making representations for an individual to the Home Office, a Minister, a Tribunal or Court in relation 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 (that is, 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.

Who is permitted to provide immigration advice and services?

Under the Act, the following people may provide immigration advice and immigration services:

1. A person authorised by a designated professional body

Members of certain professional bodies may provide immigration advice and services without registering with the OISC (see below on OISC registration). These are:

- **Barristers** regulated by the General Council of the Bar (England and Wales); Faculty of Advocates (Scotland); or the General Council of the Bar of Northern Ireland (Northern Ireland). Only barristers who are part of the Bar's public access scheme can be contacted directly. Barristers who are not part of this scheme are unable to take cases or give advice directly to members of the public.
- **Solicitors** regulated by the Law Society of England and Wales; the Law Society of Scotland; or the Law Society of Northern Ireland; and
- **Legal executives** regulated by the Chartered Institute of Legal Executives.

2. An individual or organisation registered by the OISC

Advisers and organisations registered by the OISC are listed in the OISC register at: http://home.oisc.gov.uk/register_of_regulated_immigration_advisers/register.aspx

Advisers must agree to comply with the OISC code of standards and OISC rules and meet other requirements such as having appropriate case management procedures; having an established complaints scheme; and carrying insurance against giving poor advice. They must have and maintain the appropriate knowledge and skills for the level and type of work conducted. An adviser may be registered to conduct work in asylum and protection cases or in immigration cases or in both of these. There are three levels of practice. Level one covers simple applications such as those within the immigration rules and straightforward applications under European Union and nationality law. Level two involves more complex casework including all asylum, detention and removals casework. At level three, advisers may also represent at appeals (but not judicial reviews) before the immigration tribunal.

3. A person who is exempted from the regulations

The Immigration and Asylum Act 1999 allows for some people to be exempt from regulation. Employers and educational institutions that are licensed to sponsor migrants to work for, or to study with, them are exempted for advice given to the people they sponsor (and their family members) on immigration matters related to whether the individual may work for or study with them.

4. A person who satisfies equivalent requirements in a European Economic Area state;
5. A person who is acting for, and under the supervision, of any of the above.

Criminal offence and penalty

People providing immigration advice or immigration services in breach of the Immigration and Asylum Act 1999 commit a criminal offence. If a prosecution is brought, and they are found guilty, a fine or period of imprisonment (maximum two years) can be imposed.

Further information

Further information about the OISC and regulation is available at:

<https://www.gov.uk/government/organisations/office-of-the-immigration-services-commissioner>
For links to all the websites of professional bodies see <http://www.ilpa.org.uk/pages/a-career-in-immigration-law.html>