



information sheet

Regulation of Immigration Advice

11th June 2009

On 8 April 2009, the UK Border Agency opened a consultation on how immigration advice should be regulated. This information sheet provides information about the existing regulation of immigration advice and the proposals set out in the consultation.

How immigration advice is regulated currently

The Immigration and Asylum Act 1999 makes it a criminal offence to provide immigration advice or services unless the Act permits this. Advice and services are each defined in the Act. The definitions are not set out here; and for ease of reference advice is used here to refer to both.

The Act permits the following to provide immigration advice:

- someone who is registered with or granted an exemption by the Office of the Immigration Services Commissioner (OISC)
- someone who is authorised by a professional body (e.g. the Law Societies, the Institute of Legal Executives, the Bar Councils or the Faculty of Advocates)
- someone who is permitted to provide equivalent services in a European Economic Area (EEA) State
- someone who works under the supervision of any of the above

The difference between those registered with OISC to give immigration advice and exempted by OISC to do so, is that registered advisers may charge for giving advice but exempted advisers may not. Registered and exempted advisers are both required to be regulated by OISC. Exempted advisers (those who do not charge for giving advice), however, are exempt from the OISC registration fee.

Office of the Immigration Services Commissioner (OISC)

The Office of the Immigration Services Commissioner (OISC) was established in May 2001, under provisions of the Immigration and Asylum Act 1999. OISC's responsibilities include:

- promote good practice by immigration advisers
- take steps to ensure immigration advisers are competent, act in the best interests of their clients and act according to ethical standards
- maintain a register of immigration advisers
- deal with complaints against immigration advisers
- investigate and prosecute offences by immigration advisers

The majority of those who are not authorised by one of the professional bodies (see above) are required to register with OISC if they wish to provide immigration advice. To be registered, they must pass an online test. They must also agree to comply with OISC's standards and rules. Finally, OISC must be satisfied of their competence to provide immigration advice.

It is possible to be registered (or exempt) at three levels – OISC level 1, level 2 and level 3. The higher the level, the greater the range of immigration advice work that the immigration adviser is permitted to do. It is a criminal offence for someone to give advice beyond the level at which he or she is registered (or exempt), just as it is a criminal offence for someone to give advice if he or she is not registered (or exempt).

Further information about OISC is available at: www.oisc.gov.uk

ILPA information service

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www.ilpa.org.uk/infoservice.html

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Information sheets provide general information only.

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

The current consultation

The current consultation broadly proposes three options:

- make no change
- increase the powers of OISC
- bring OISC within a wider legal framework for regulation and standards of legal advice (established by the Legal Services Act 2007)

The consultation document states that the Government prefers the second of these three options. The document also sets out some more specific proposals for change, including:

- introducing bans preventing those that have been convicted of illegally providing immigration advice from joining the regulated system for giving such advice
- listing registered and exempted advisers in the same list
- introducing a notice system so that OISC can issue formal notices to individuals that they must improve or stop what they are doing (it may be that failure to comply with a notice would itself be made a criminal offence – the consultation document does not give any information about this)
- increasing charges to immigration advisers to pay for more of the cost of maintaining OISC – including that those who are currently exempt from the fee (that is those who do not charge for giving immigration advice – see above) should in future pay the fee

More detail of the proposal to increase charges to immigration advisers is given in the impact assessment published alongside the consultation document. This suggests charging advisers up to around £1,000 per annum, in addition to the existing fee for registration.

Responding to the consultation

The consultation document sets out a series of questions. There are twelve questions in total. However, it is not necessary to answer all twelve questions or limit a response to the questions that are set out. It is also possible to answer none of the questions, but instead set out any information or concerns that you would like the Government to consider.

In considering whether to respond to the consultation or what to say in response to it, small voluntary organisations, who are currently registered or exempt, may usefully consider the following:

- What do you think are the advantages of being registered?
- Would the proposals affect your decision to continue giving immigration advice?
- Would you be able to afford the fee?

Small voluntary organisations, who are not giving immigration advice at this time may usefully consider the following:

- Will you consider becoming registered or exempt so as to be able to give immigration advice in the future?
- Will the proposals affect your decision?
- Would you be able to afford the fee?

The consultation document and an impact assessment are available at:

http://www.ind.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/221878/oversight_of_the_immigration_adv/

Responses to the consultation may be sent to:

ImmigrationAdviceConsultation@homeoffice.gsi.gov.uk/

The consultation closes on 6 August 2009. All responses should be received by that date.