

Immigration Bill

Factsheet: Immigration Advisers and Immigration Service Providers (clause 58 and Schedule 7)

Immigration Minister Mark Harper:

“It is vital that the immigration advice sector is properly regulated in order to protect its clients from opportunistic and unscrupulous immigration advisers.

“This new legislation will extend the powers of the Immigration Services Commissioner so that she will be able to regulate more effectively and promptly prevent unfit and incompetent organisations continuing with their activities.

“These changes will also save money for the taxpayer by reducing the time and funds wasted on dealing with unmeritorious applications and appeals concocted by unscrupulous advisers.”

Background

The immigration advice sector has always attracted, and continues to attract, opportunistic and unscrupulous immigration advisers. Parliament recognised this by passing the Immigration and Asylum Act 1999 which makes it an offence to provide immigration advice and services without being regulated by the Office of the Immigration Services Commissioner (OISC) or an existing qualifying regulator such as the Law Society.

The number of regulated bodies has increased steadily since the OISC was established and stood at 1,971 on 31 March 2013. These bodies vary widely from small community-based organisations and sole traders through to national charities and large specialist advisory services.

The Government believes that the powers of the Commissioner, currently Suzanne McCarthy, need strengthening to enable her to fulfil her role effectively, in particular in relation to the cancellation or suspension of registration, and her powers of entry. The current regulatory regime is also unnecessarily complicated and confusing in the way it distinguishes between organisations that charge and do not charge for their services.

What we are going to do:

- Ensure the immediate cancellation of the registration of unfit, incompetent or defunct organisations. Under the present law, the Commissioner has sometimes been unable to remove organisations from her approved list of fit and competent firms for many months after they have become defunct or have been found to be otherwise unfit to operate.

- Allow the suspension of an adviser charged with a serious criminal offence. There have been a number of situations where the Commissioner has been obliged to continue to allow advisers to operate and to appear on her authorised list of advisers when they have been charged in relation to serious criminal conduct.
- Enable the Commissioner to require entry to business premises to conduct inspections. At present she can only require entry in relation to the investigation of a specific complaint. This means that even where there are concerns about whether an adviser is operating inappropriately, it is currently possible for that to continue for a sustained period before the Commissioner has enough evidence to be able to take action.
- Allow the Commissioner to require entry to a business operating from a private residence to conduct an inspection or to investigate a complaint. At present, some such organisations, which make up about 20% of regulated organisations, are able to frustrate the Commissioner's attempts to inspect them or investigate complaints.
- Create a single category of regulated organisation. At present the Commissioner exempts over 800 immigration organisations, generally voluntary bodies, from the requirement to be registered, so that they do not need to pay a fee. The different rules which apply to the regulation of exempt organisations have resulted in a confusing and unnecessarily complicated regulatory scheme.

How we are going to do it:

- Create a new duty on the Commissioner to cancel the registration of a regulated organisation in certain circumstances, including where they are unfit, incompetent or defunct. Cancellation decisions will be appealable to the First-tier Tribunal (Immigration Services).
- Create a power for the Commissioner to apply to the Tribunal to suspend the activities of an adviser charged with a serious criminal offence until the matter has been resolved.
- Allow the Commissioner to apply to a Magistrate, or Sheriff in Scotland, for a warrant to enter, at reasonable times, any premises in which a regulated adviser is operating and to which she needs access. There would be no provision to use force to gain entry; failure to comply with such a warrant could result in cancellation of the organisation's registration.
- Require all immigration organisations to be registered, but provide a power for the Secretary of State by order to require or authorise the Commissioner to waive the requirement to pay a fee in respect of certain organisations. The Government intends, subject to parliamentary approval, to use this power to maintain the existing arrangement under which those organisations that do not charge for their services are not required to pay a fee.

The bill will benefit:

The five proposals in the Bill will lead to improvements in the regulation of immigration advice and services and improvements in the quality of immigration advice, resulting in a reduction in the harm caused by dishonest or incompetent advisers. Effective regulation of immigration advice protects clients from exploitation and also prevents unmeritorious applications and appeals which waste public funds and delay the handling of other immigration cases.

Next steps

The new powers will be commenced by order. In respect of the creation of a single category of regulated organisation, the Bill requires the Commissioner to immediately register exempt organisations on commencement. This means that they will not need to apply to the Commissioner to become registered. The Government intends to make an order requiring the Commissioner to waive the registration fees of organisations that do not charge for their services.

Q&A

Will these changes mean that the Government will be introducing fees for non-profit organisations?

No. The government is committed to maintaining the principle that those organisations that do not charge for their services, do not pay a fee to the OISC. Subject to Parliamentary approval, the government intends to make an order to this effect once the Bill is enacted.

Do these changes place additional burdens on third sector organisations?

No. Under the new arrangements, third sector organisations that do not charge for their services will need to reapply for registration at a frequency to be determined by the Commissioner. However, this is very similar to the process they currently comply with voluntarily under which they submit details of their advisers to the OISC annually.

Further Reading:

Details of the OISC are available on their website: <http://oisc.homeoffice.gov.uk/>

Home Office
October 2013