

IMMIGRATION AND ASYLUM ACT 1999

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part V: Immigration advisers and immigration service providers

244. Part V of the Bill makes provision for the regulation of immigration advisers and immigration service providers.
245. In the White Paper, the Government announced its intention to introduce legislation to regulate immigration advisers. The scheme covers both non-legally and legally qualified advisers. It will be unlawful for any person to provide immigration advice by way of business in or from the United Kingdom, unless they are registered to do so; a member of a designated professional body or European equivalent; or exempt from registration.

Section 82: Interpretation of Part V

246. Those providing immigration advice and services in connection with criminal proceedings are not caught by the regulatory scheme. Those providing advice in connection with a bail application in the context of immigration detention are covered as a relevant matter. Immigration advice or services are defined as advice given or representations made in the course of business whether or not for profit. The term “relevant matters” means a claim for asylum; an application for, or the variation of, entry clearance or leave to enter or remain in the United Kingdom; unlawful entry into the United Kingdom; nationality and citizenship under the law of the United Kingdom; citizenship of the EU; admission to Member States of the EU under Community law; residence in a Member State of the EU in accordance with rights conferred by or under Community law; removal or deportation from the United Kingdom; an application for bail under the Immigration Acts or under the Special Immigration Appeals Commission Act 1997; or an appeal against, or an application for judicial review in relation to, any decision taken in connection with the above matters.

Section 83: The Immigration Services Commissioner

247. This section makes provision for the appointment by the Secretary of State, after consulting the Lord Chancellor, of the Immigration Services Commissioner (the Commissioner) and sets out his general functions. The Commissioner must exercise these functions to ensure that those who provide immigration advice or services are fit and competent to do so, act in the best interests of their clients, do not mislead any court, tribunal or adjudicator and do not seek to abuse immigration or asylum procedures or advise another to do so. The Commissioner is required to publicise his functions.

Section 84: Provision of immigration services

248. This section prohibits the provision of immigration advice or services by those who are not qualified to do so. Contravention of the prohibition is an offence. The section sets out who are to be qualified persons. These include those who are registered with the Commissioner, or who are members of a designated professional body or equivalent

EEA professional body. It provides the Commissioner and the Secretary of State with the power to exempt a person or category of persons, respectively, from the scheme. The Commissioner is provided with the power to exempt a person in respect of the provision of certain types of immigration advice or services and not others: for example, the Commissioner may exempt a person from giving advice on immigration cases but not on asylum cases. It also sets out those who do not fall to be regulated, including those employed by a government department when acting in that capacity.

Section 85: Registration and exemption by the Commissioner

249. This section states that the Commissioner must keep a register of those persons he has registered and a record of those he has exempted from registration. It also introduces Schedule 6. The register will record who is a qualified person to provide immigration advice or services and who is exempt.

Section 86: Designated professional bodies

250. This section lists the designated professional bodies whose members are to be considered qualified to provide immigration advice or services. It provides the Secretary of State with the power to amend the list of designated professional bodies and places a duty on the Commissioner to keep this list under review and to report to the Secretary of State any failure of a body to provide effective regulation of its members. The intention is to catch a general failing rather than a single act of ineffective regulation.
251. The Secretary of State is required to consult the Commissioner, the Legal Services Ombudsman or territorial equivalents before removing a body from the list of designated bodies by order. The Secretary of State is also required to seek the agreement of the Lord Chancellor or (as the case may be) Scottish Ministers before removing a body from the list of designated professional bodies. The Lord Chancellor or the Scottish Ministers are required to consult the designated judges or the Lord President of the Court of Session, respectively, about this matter.
252. A designated professional body may seek to remove itself from the list of designated professional bodies. A fee set by the Secretary of State is payable by each designated body.

Section 87: The Immigration Services Tribunal

253. This section establishes the Immigration Services Tribunal, which will hear disciplinary charges laid by the Commissioner and to which any person aggrieved by certain decisions of the Commissioner (such as to refuse registration or continuation of registration) may appeal. Schedule 7 sets out matters regarding appointment to the Tribunal.

Section 88: Appeal upheld by the Immigration Services Tribunal

254. This section gives the Immigration Services Tribunal certain powers when it allows an appeal against a decision of the Commissioner. For example, in an allowed appeal against the decision of the Commissioner to refuse an application for registration or continuation of registration, it may direct the Commissioner to register the applicant if appropriate with a limitation on the applicant's registration.

Section 89: Disciplinary charges upheld by the Immigration Services Tribunal

255. This section gives the Immigration Services Tribunal power to impose a range of sanctions, amongst which are the power to direct the Commissioner to record the charge for consideration on application for continued registration; to direct the applicant to seek continued registration without delay; to direct the Commissioner to consider whether to withdraw exemption; to direct the repayment of fees to clients; to direct the payment of a penalty; and to direct the restriction, suspension or prohibition of the provision of

immigration advice and services, including advice and services provided by employees or those working under supervision. It also makes provision for the Commissioner to recover a penalty, and for clients to recover fees, from those who have been found by the Tribunal to charge unreasonable fees.

Section 90: Orders by disciplinary bodies

256. This section enables the disciplinary body of a designated professional body to be given powers to restrict, suspend or prohibit the provision of immigration advice or services by a member of that professional body. The disciplinary bodies to have these powers are to be specified in an order made by the Secretary of State, subject to consultation with the relevant designated professional body.

Section 91: Offences

257. This section sets out the penalties for those providing immigration advice or services if not qualified to do so or when subject to a restraining order, namely: on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or both, or on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or both. A restraining order is defined as either a direction given by the Immigration Services Tribunal or an order made by a disciplinary body to restrict, suspend or prohibit the provision of immigration advice or services. Where it is proved that an offence has been committed by a body corporate with the consent, connivance or neglect of an officer of that body, that officer will also be guilty of the offence.

Section 92: Enforcement

258. This section provides the Commissioner with the power to apply to a county or sheriff court for an injunction or interdict where a person continues to provide immigration advice or services when not qualified, or when restrained from doing so.

Section 93: Information

259. This section sets out provisions governing disclosure of information to the Commissioner and the Immigration Services Tribunal. It also sets out provisions governing the disclosure of information by the Commissioner and prohibits the disclosure of information without lawful authority. This is particularly important in view of the powers available to the Commissioner, or those acting on his authority, for entry to premises (Schedule 5, paragraph 7).