



# Immigration and Asylum Act 1999

## 1999 CHAPTER 33

### PART V

#### IMMIGRATION ADVISERS AND IMMIGRATION SERVICE PROVIDERS

##### *Interpretation*

#### **82 Interpretation of Part V.**

(1) In this Part—

“claim for asylum” means a claim that it would be contrary to the United Kingdom’s obligations under—

- (a) the Refugee Convention, or
- (b) Article 3 of the Human Rights Convention,

for the claimant to be removed from, or required to leave, the United Kingdom;

“the Commissioner” means the Immigration Services Commissioner;

“the complaints scheme” means the scheme established under paragraph 5(1) of Schedule 5;

“designated judge” has the same meaning as in section 119(1) of the <sup>MI</sup>Courts and Legal Services Act 1990;

“designated professional body” has the meaning given by section 86;

“immigration advice” means advice which—

- (a) relates to a particular individual;
- (b) is given in connection with one or more relevant matters;
- (c) is given by a person who knows that he is giving it in relation to a particular individual and in connection with one or more relevant matters; and
- (d) is not given in connection with representing an individual before a court in criminal proceedings or matters ancillary to criminal proceedings;

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“immigration services” means the making of representations on behalf of a particular individual—

- (a) in civil proceedings before a court, tribunal or adjudicator in the United Kingdom, or
- (b) in correspondence with a Minister of the Crown or government department,

in connection with one or more relevant matters;

“Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975;

“qualified person” means a person who is qualified for the purposes of section 84;

“registered person” means a person who is registered with the Commissioner under section 85;

“relevant matters” means any of the following—

- (a) a claim for asylum;
  - (b) an application for, or for the variation of, entry clearance or leave to enter or remain in the United Kingdom;
  - (ba) [<sup>F1</sup> an application for an immigration employment document;]
  - (c) unlawful entry into the United Kingdom;
  - (d) nationality and citizenship under the law of the United Kingdom;
  - (e) citizenship of the European Union;
  - (f) admission to Member States under Community law;
  - (g) residence in a Member State in accordance with rights conferred by or under Community law;
  - (h) removal or deportation from the United Kingdom;
  - (i) an application for bail under the Immigration Acts or under the <sup>M3</sup>Special Immigration Appeals Commission Act 1997;
  - (j) an appeal against, or an application for judicial review in relation to, any decision taken in connection with a matter referred to in paragraphs (a) to (i); <sup>F2</sup> ...
- <sup>F2</sup> ...

(2) In this Part, references to the provision of immigration advice or immigration services are to the provision of such advice or services by a person—

- (a) in the United Kingdom (regardless of whether the persons to whom they are provided are in the United Kingdom or elsewhere); and
- (b) in the course of a business carried on (whether or not for profit) by him or by another person.

[<sup>F3</sup>(3) In the definition of “relevant matters” in subsection (1) “immigration employment document” means—

- (a) a work permit (within the meaning of section 33(1) of the Immigration Act 1971 (interpretation)), and
- (b) any other document which relates to employment and is issued for a purpose of immigration rules or in connection with leave to enter or remain in the United Kingdom.]

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#### Textual Amendments

- F1** Words in s. 82(1) inserted (1.4.2004) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), [ss. 123\(2\)](#), [162\(1\)](#) (with s. 159); [S.I. 2003/754](#), [art. 2\(1\)](#), [Sch. 1](#) (with arts. 3, 4, [Sch. 2 para. 5](#)) (as amended (21.5.2003) by [S.I. 2003/1339](#), [art. 3](#) and (19.11.2003) by [S.I. 2003/2993](#), [art. 3](#))
- F2** Definition and preceding word in s. 82(1) omitted (18.1.2010) by virtue of [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), [art. 1\(1\)](#), [Sch. 2 para. 33](#) (with [Sch. 5](#))
- F3** S. 82(3) added (1.4.2004) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), [ss. 123\(3\)](#), [162\(1\)](#) (with s. 159); [S.I. 2003/754](#), [art. 2\(1\)](#), [Sch. 1](#) (with arts. 3, 4, [Sch. 2 para. 5](#)) (as amended (21.5.2003) by [S.I. 2003/1339](#), [art. 3](#) and (19.11.2003) by [S.I. 2003/2993](#), [art. 3](#))

#### Marginal Citations

- M1** 1990 c. 41.  
**M2** 1975 c. 26.  
**M3** 1997 c. 68.

### *The Immigration Services Commissioner*

#### **83 The Commissioner.**

- (1) There is to be an Immigration Services Commissioner (referred to in this Part as “the Commissioner”).
- (2) The Commissioner is to be appointed by the Secretary of State after consulting the Lord Chancellor and the Scottish Ministers.
- (3) It is to be the general duty of the Commissioner to promote good practice by those who provide immigration advice or immigration services.
- (4) In addition to any other functions conferred on him by this Part, the Commissioner is to have the regulatory functions set out in Part I of Schedule 5.
- (5) The Commissioner must exercise his functions so as to secure, so far as is reasonably practicable, that those who provide immigration advice or immigration services—
  - (a) are fit and competent to do so;
  - (b) act in the best interests of their clients;
  - (c) do not knowingly mislead any court, tribunal or adjudicator in the United Kingdom;
  - (d) do not seek to abuse any procedure operating in the United Kingdom in connection with immigration or asylum (including any appellate or other judicial procedure);
  - (e) do not advise any person to do something which would amount to such an abuse.
- (6) The Commissioner—
  - (a) must arrange for the publication, in such form and manner and to such extent as he considers appropriate, of information about his functions and about matters falling within the scope of his functions; and
  - (b) may give advice about his functions and about such matters.
- (7) Part II of Schedule 5 makes further provision with respect to the Commissioner.

*Status: Point in time view as at 18/01/2010.*

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### Commencement Information

- II** S. 83 wholly in force at 30.10.2000; s. 83 not in force at Royal Assent see s. 170(4); s. 83(1)-(3)(6) (7) wholly in force and s. 83(4)(5) in force for certain purposes at 22.5.2000 by [S.I. 2000/1282](#), [art. 2](#), [Sch.](#); s. 83(4)(5) in force at 30.10.2000 insofar as not already in force by [S.I. 2000/1985](#), [art. 2](#), [Sch.](#) (with transitional provisions in [art. 3](#))

### *The general prohibition*

#### **84 Provision of immigration services.**

(1) No person may provide immigration advice or immigration services unless he is a qualified person.

[<sup>F4</sup>(2) A person is a qualified person if he is—

- (a) a registered person,
- (b) authorised by a designated professional body to practise as a member of the profession whose members the body regulates,
- (c) the equivalent in an EEA State of—
  - (i) a registered person, or
  - (ii) a person within paragraph (b),
- (d) a person permitted, by virtue of exemption from a prohibition, to provide in an EEA State advice or services equivalent to immigration advice or services, or
- (e) acting on behalf of, and under the supervision of, a person within any of paragraphs (a) to (d) (whether or not under a contract of employment).]

[<sup>F4</sup>(3) Subsection (2)(a) and (e) are subject to any limitation on the effect of a person's registration imposed under paragraph 2(2) of Schedule 6.]

(4) Subsection (1) does not apply to a person who—

- (a) is certified by the Commissioner as exempt (“an exempt person”);
- (b) is employed by an exempt person;
- (c) works under the supervision of an exempt person or an employee of an exempt person; or
- (d) who falls within a category of person specified in an order made by the Secretary of State for the purposes of this subsection.

(5) A certificate under subsection (4)(a) may relate only to a specified description of immigration advice or immigration services.

(6) Subsection (1) does not apply to a person—

- (a) holding an office under the Crown, when acting in that capacity;
- (b) employed by, or for the purposes of, a government department, when acting in that capacity;
- (c) acting under the control of a government department; or
- (d) otherwise exercising functions on behalf of the Crown.

(7) An exemption given under subsection (4) may be withdrawn by the Commissioner.

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#### Textual Amendments

- F4** S. 84(2)(3) substituted (1.10.2004) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c. 19\)](#), [ss. 37\(1\)](#), [48\(3\)](#); [S.I. 2004/2523](#), [art. 2](#), [Sch.](#)

#### Modifications etc. (not altering text)

- C1** S. 84(1) excluded (temp. from 30.4.2001 to the end of January 2002) by [S.I. 2001/1393](#), [arts. 1, 3, 4](#)  
S. 84(1) excluded (30.4.2001) by [S.I. 2001/1403](#), [arts. 2-4](#), [Schs. 1-3](#)  
S. 84(1) excluded (temp. from 1.2.2002 to 31.12.2002) by [The Immigration and Asylum Act 1999 \(Part V Exemption: Relevant Employers\) Order 2002 \(S.I. 2002/9\)](#), [arts. 1, 3](#)  
S. 84(1) excluded (temp. from 1.1.2003 to 31.12.2003) by [The Immigration and Asylum Act 1999 \(Part V Exemption: Relevant Employers\) Order 2002 \(S.I. 2002/3025\)](#), [arts. 1, 3](#)
- C2** S. 84(4)(d) extended (1.1.2004) by [Immigration and Asylum Act 1999 \(Part V Exemption; Relevant Employers\) Order 2003 \(S.I. 2003/3214\)](#), [arts. 1, 3](#)

#### Commencement Information

- I2** S. 84 wholly in force at 30.4.2001; s. 84 not in force at Royal Assent see [s. 170\(4\)](#); [s. 84\(5\)\(7\)](#) wholly in force and [s. 84\(2\)\(a\)\(b\)\(4\)\(a\)\(d\)](#) in force for certain purposes at 30.10.2000 by [S.I. 2000/1985](#), [art. 2](#), [Sch.](#) (with transitional provisions in [art. 3](#)); s. 84 in force so far as not already in force at 30.4.2001 by [S.I. 2001/1394](#), [art. 2](#), [Sch.](#)

### 85 Registration and exemption by the Commissioner.

- (1) The Commissioner must prepare and maintain a register for the purposes of section 84(2)(a) <sup>F5</sup>....
- (2) The Commissioner must keep a record of the persons to whom he has issued a certificate of exemption under section 84(4)(a).
- (3) Schedule 6 makes further provision with respect to registration.

#### Textual Amendments

- F5** Words in [s. 85\(1\)](#) repealed (1.10.2004) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c. 19\)](#), [ss. 37\(2\)](#), [48\(3\)](#), [Sch. 4](#); [S.I. 2004/2523](#), [art. 2](#), [Sch.](#)

#### Commencement Information

- I3** S. 85 wholly in force at 30.10.2000; s. 85 not in force at Royal Assent see [s. 170\(4\)](#); [s. 85\(3\)](#) in force for certain purposes at 1.8.2000 and s. 85 in force at 30.10.2000 insofar as not already in force by [S.I. 2000/1985](#), [art. 2](#), [Sch.](#) (with transitional provisions in [art. 3](#))

### 86 Designated professional bodies.

- (1) “Designated professional body” means—
  - <sup>F6</sup>(a) .....
  - (b) The Law Society of Scotland;
  - (c) The Law Society of Northern Ireland;
  - <sup>F6</sup>(d) .....
  - <sup>F6</sup>(e) .....
  - (f) The Faculty of Advocates; or

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- (g) The General Council of the Bar of Northern Ireland.
- [<sup>F7</sup>(2) The Secretary of State may by order remove a body from the list in subsection (1) if he considers that the body—
- (a) has failed to provide effective regulation of its members in their provision of immigration advice or immigration services, or
  - (b) has failed to comply with a request of the Commissioner for the provision of information (whether general or in relation to a particular case or matter).]

(3) If a designated professional body asks the Secretary of State to amend subsection (1) so as to remove its name, the Secretary of State may by order do so.

(4) If the Secretary of State is proposing to act under subsection (2) he must, before doing so—

    - (a) consult the Commissioner;
    - (b) consult the Legal Services Ombudsman, if the proposed order would affect a designated professional body in England and Wales;
    - (c) consult the [<sup>F8</sup>Scottish Legal Complaints Commission], if the proposed order would affect a designated professional body in Scotland;
    - (d) consult the lay observers appointed under Article 42 of the <sup>M4</sup>Solicitors (Northern Ireland) Order 1976, if the proposed order would affect a designated professional body in Northern Ireland;
    - (e) notify the body concerned of his proposal and give it a reasonable period within which to make representations; and
    - (f) consider any representations so made.

(5) An order under subsection (2) requires the approval of—

    - (a) the Lord Chancellor, if it affects a designated professional body in <sup>F9</sup>... Northern Ireland;
    - (b) the Scottish Ministers, if it affects a designated professional body in Scotland.

(6) Before deciding whether or not to give his approval under subsection (5)(a), the Lord Chancellor must consult—

    - <sup>F10</sup>(a) .....
    - (b) the Lord Chief Justice of Northern Ireland, if it affects a designated professional body in Northern Ireland.

(7) Before deciding whether or not to give their approval under subsection (5)(b), the Scottish Ministers must consult the Lord President of the Court of Session.

(8) If the Secretary of State considers that a body which—

    - (a) is concerned (whether wholly or in part) with regulating the legal profession, or a branch of it, in an EEA State,
    - (b) is not a designated professional body, and
    - (c) is capable of providing effective regulation of its members in their provision of immigration advice or immigration services,

ought to be designated, he may by order amend subsection (1) to include the name of that body.

(9) The Commissioner must—

    - (a) keep under review the list of designated professional bodies set out in subsection (1); and

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[<sup>F11</sup>(b) report to the Secretary of State if the Commissioner considers that a designated professional body—

- (i) is failing to provide effective regulation of its members in their provision of immigration advice or immigration services, or
- (ii) has failed to comply with a request of the Commissioner for the provision of information (whether general or in relation to a particular case or matter).]

[<sup>F12</sup>(9A) A designated professional body shall comply with a request of the Commissioner for the provision of information (whether general or in relation to a specified case or matter).]

(10) For the purpose of meeting the costs incurred by the Commissioner in discharging his functions under this Part, each designated professional body must pay to the Commissioner, in each year and on such date as may be specified, such fee as may be specified.

(11) Any unpaid fee for which a designated professional body is liable under subsection (10) may be recovered from that body as a debt due to the Commissioner.

(12) “Specified” means specified by an order made by the Secretary of State.

#### Textual Amendments

- F6** S. 86(1)(a)(d)(e) repealed (1.1.2010) by [Legal Services Act 2007 \(c. 29\)](#), s. 211(2), [Sch. 18 para. 13\(2\)](#), [Sch. 23](#) (with [ss. 29, 192, 193](#)); [S.I. 2009/3250](#), art. 2(i)(xi)
- F7** S. 86(2) substituted (1.10.2004) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c. 19\)](#), [ss. 41\(2\)](#), 48(3); [S.I. 2004/2523](#), art. 2, [Sch.](#)
- F8** Words in s. 86(4)(c) substituted (1.10.2008) by [Legal Services Act 2007 \(c. 29\)](#), [ss. 196\(2\)\(a\)](#), 211(2) (with [ss. 29, 192, 193](#)); [S.I. 2008/1436](#), art. 3(a)
- F9** Words in s. 86(5)(a) repealed (1.1.2010) by [Legal Services Act 2007 \(c. 29\)](#), s. 211(2), [Sch. 18 para. 13\(3\)](#), [Sch. 23](#) (with [ss. 29, 192, 193](#)); [S.I. 2009/3250](#), art. 2(i)(xi)
- F10** S. 86(6)(a) repealed (1.1.2010) by [Legal Services Act 2007 \(c. 29\)](#), s. 211(2), [Sch. 18 para. 13\(4\)\(a\)](#), [Sch. 23](#) (with [ss. 29, 192, 193](#)); [S.I. 2009/3250](#), art. 2(i)(xi)
- F11** S. 86(9)(b) substituted (1.10.2004) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c. 19\)](#), [ss. 41\(3\)](#), 48(3); [S.I. 2004/2523](#), art. 2, [Sch.](#)
- F12** S. 86(9A) inserted (1.10.2004) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c. 19\)](#), [ss. 41\(4\)](#), 48(3); [S.I. 2004/2523](#), art. 2, [Sch.](#)

#### Commencement Information

- I4** S. 86 wholly in force at 30.4.2001; s. 86 not in force at Royal Assent see s. 170(4); s. 86(1)-(9) in force at 22.5.2000 by [S.I. 2000/1282](#), art. 2, [Sch.](#); s. 86(10)-(12) in force for certain purposes at 30.10.2000 by [S.I. 2000/1985](#), art. 2, [Sch.](#) (with transitional provisions in [art. 3](#)); S. 86 in force so far as not already in force at 30.4.2001 by [S.I. 2001/1394](#), art. 2, [Sch.](#)

#### Marginal Citations

- M4** [S.I. 1976/582 \(N.I. 12\)](#).

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*[<sup>F13</sup>Appeals to the First-tier Tribunal]*

**Textual Amendments**

**F13** S. 87 crossheading substituted (18.1.2010) by [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), art. 1(1), [Sch. 2 para. 34](#) (with Sch. 5)

**87** [<sup>F14</sup>Appeals to the First-tier Tribunal.]

<sup>F15</sup>(1) .....

(2) Any person aggrieved by a relevant decision of the Commissioner may appeal to the [<sup>F16</sup>First-tier Tribunal] against the decision.

(3) “Relevant decision” means a decision—

- (a) to refuse an application for registration made under paragraph 1 of Schedule 6;
- (b) to withdraw an exemption given under section 84(4)(a);
- (c) under paragraph 2(2) of that Schedule to register with limited effect;
- (d) to refuse an application for continued registration made under paragraph 3 of that Schedule;
- (e) to vary a registration on an application under paragraph 3 of that Schedule;

[<sup>F17</sup>(ea) to vary a registration under paragraph 3A of that Schedule;] or

<sup>F18</sup>(f) .....

[<sup>F19</sup>(3A) A relevant decision of the Commissioner is not to have effect while the period within which an appeal may be brought against the decision is running.

(3B) In the case of an appeal under this section, Tribunal Procedure Rules may include provision permitting the First-tier Tribunal to direct that while the appeal is being dealt with—

- (a) no effect is to be given to the decision appealed against; or
- (b) only such limited effect is to be given to it as may be specified in the direction.

(3C) If provision is made in Tribunal Procedure Rules by virtue of subsection (3B), the rules must also include provision requiring the First-tier Tribunal to consider applications by the Commissioner for the cancellation or variation of directions given by virtue of that subsection.]

[<sup>F20</sup>(4) For a further function of the First-tier Tribunal under this Part, see paragraph 9(1)(e) of Schedule 5 (disciplinary charges laid by the Commissioner).]

<sup>F21</sup>(5) .....

**Textual Amendments**

**F14** S. 87 heading substituted (18.1.2010) by [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), art. 1(1), [Sch. 2 para. 35\(a\)](#) (with Sch. 5)

**F15** S. 87(1) omitted (18.1.2010) by virtue of [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), art. 1(1), [Sch. 2 para. 35\(b\)](#) (with Sch. 5)

**F16** Words in s. 87(2) substituted (18.1.2010) by [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), art. 1(1), [Sch. 2 para. 35\(c\)](#) (with Sch. 5)



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- F17** S. 87(3)(ea) inserted (8.1.2003) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\), s. 140\(3\)](#) (with s. 159); [S.I. 2002/2811, art. 2, Sch.](#) (with art. 5)
- F18** S. 87(3)(f) repealed (1.10.2004) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c. 19\), ss. 40, 48\(3\), Sch. 4; S.I. 2004/2523, art. 2, Sch.](#)
- F19** S. 87(3A)-(3C) inserted (18.1.2010) by [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\), art. 1\(1\), Sch. 2 para. 35\(d\)](#) (with Sch. 5)
- F20** S. 87(4) substituted (18.1.2010) by [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\), art. 1\(1\), Sch. 2 para. 35\(e\)](#) (with Sch. 5)
- F21** S. 87(5) omitted (18.1.2010) by virtue of [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\), art. 1\(1\), Sch. 2 para. 35\(b\)](#) (with Sch. 5)

#### Commencement Information

- I5** S. 87 wholly in force at 30.10.2000; s. 87 not in force at Royal Assent see s. 170(4); s. 87(5) in force for certain purposes at 1.8.2000 and s. 87 in force at 30.10.2000 insofar as not already in force by [S.I. 2000/1985, art. 2, Sch.](#) (with transitional provisions in [art. 3](#))

### 88 Appeal upheld by the <sup>[F22]</sup>First-tier Tribunal.

- (1) This section applies if the <sup>[F23]</sup>First-tier Tribunal allows an appeal under section 87.
- (2) If the <sup>[F24]</sup>First-tier Tribunal considers it appropriate, it may direct the Commissioner—
- to register the applicant or to continue the applicant’s registration;
  - to make or vary the applicant’s registration so as to have limited effect in any of the ways mentioned in paragraph 2(2) of Schedule 6;
  - to restore an exemption granted under section 84(4)(a); or
  - to quash a decision recorded under paragraph 9(1)(a) of Schedule 5 and the record of that decision.

#### Textual Amendments

- F22** Words in s. 88 heading substituted (18.1.2010) by [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\), art. 1\(1\), Sch. 2 para. 36](#) (with Sch. 5)
- F23** Words in s. 88(1) substituted (18.1.2010) by [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\), art. 1\(1\), Sch. 2 para. 36](#) (with Sch. 5)
- F24** Words in s. 88(2) substituted (18.1.2010) by [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\), art. 1\(1\), Sch. 2 para. 36](#) (with Sch. 5)

### 89 Disciplinary charge upheld by the <sup>[F25]</sup>First-tier Tribunal.

- (1) This section applies if the <sup>[F26]</sup>First-tier Tribunal upholds a disciplinary charge laid by the Commissioner under paragraph 9(1)(e) of Schedule 5 against a person (“the person charged”).
- <sup>[F27]</sup>(2) If the person charged is a registered person or acts on behalf of a registered person, the <sup>[F26]</sup>First-tier Tribunal may—
- direct the Commissioner to record the charge and the <sup>[F26]</sup>First-tier Tribunal’s decision for consideration in connection with the registered person’s next application for continued registration;
  - direct the registered person to apply for continued registration as soon as is reasonably practicable.]

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- (4) If the person charged is certified by the Commissioner as exempt under section 84(4) (a), the [F26First-tier Tribunal] may direct the Commissioner to consider whether to withdraw his exemption.
- (5) If the person charged is found to have charged unreasonable fees for immigration advice or immigration services, the [F26First-tier Tribunal] may direct him to repay to the clients concerned such portion of those fees as it may determine.
- (6) The [F26First-tier Tribunal] may direct the person charged to pay a penalty to the Commissioner of such sum as it considers appropriate.
- (7) A direction given by the [F26First-tier Tribunal] under subsection (5) (or under subsection (6)) may be enforced by the clients concerned (or by the Commissioner)—
  - (a) as if it were an order of a county court; or
  - (b) in Scotland, as if it were an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.
- (8) The [F26First-tier Tribunal] may direct that the person charged or any person [F28acting on his behalf or] under his supervision is to be—
  - (a) subject to such restrictions on the provision of immigration advice or immigration services as the [F26First-tier Tribunal] considers appropriate;
  - (b) suspended from providing immigration advice or immigration services for such period as the [F26First-tier Tribunal] may determine; or
  - (c) prohibited from providing immigration advice or immigration services indefinitely.
- (9) The Commissioner must keep a record of the persons against whom there is in force a direction given by the [F26First-tier Tribunal] under subsection (8).

#### Textual Amendments

- F25** Words in s. 89 heading substituted (18.1.2010) by [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), art. 1(1), [Sch. 2 para. 37](#) (with [Sch. 5](#))
- F26** Words in s. 89(1)-(9) substituted (18.1.2010) by [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), art. 1(1), [Sch. 2 para. 37](#) (with [Sch. 5](#))
- F27** S. 89(2) substituted for s. 89(2)(3) (1.10.2004) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c. 19\)](#), [ss. 37\(3\)\(a\)](#), 48(3); S.I. 2004/2523, art. 2, [Sch.](#)
- F28** Words in s. 89(8) substituted (1.10.2004) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c. 19\)](#), [ss. 37\(3\)\(b\)](#), 48(3); S.I. 2004/2523, art. 2, [Sch.](#)

## 90 Orders by disciplinary bodies.

- (1) A disciplinary body may make an order directing that a person subject to its jurisdiction is to be—
  - (a) subject to such restrictions on the provision of immigration advice or immigration services as the body considers appropriate;
  - (b) suspended from providing immigration advice or immigration services for such period as the body may determine; or
  - (c) prohibited from providing immigration advice or immigration services indefinitely.
- (2) “Disciplinary body” means any body—

*Status: Point in time view as at 18/01/2010.*

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- (a) appearing to the Secretary of State to be established for the purpose of hearing disciplinary charges against members of a designated professional body; and
  - (b) specified in an order made by the Secretary of State.
- (3) The Secretary of State must consult the designated professional body concerned before making an order under subsection (2)(b).
- (4) For the purposes of this section, a person is subject to the jurisdiction of a disciplinary body if he is an authorised person or [<sup>F29</sup>is acting on behalf of] an authorised person.
- (5) “Authorised person” means a person who is authorised by the designated professional body concerned to practise as a member of the profession whose members are regulated by that body.

#### Textual Amendments

**F29** Words in s. 90(4) substituted (1.10.2004) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c. 19\), ss. 37\(4\), 48\(3\); S.I. 2004/2523, art. 2, Sch.](#)

#### Commencement Information

**I6** S. 90 wholly in force at 30.4.2001; s. 90 not in force at Royal Assent see s. 170(4); s. 90 in force for certain purposes at 1.8.2000 by [S.I. 2000/1985, art. 2, Sch.](#) (with transitional provisions in [art. 3](#)); S. 90 in force so far as not already in force at 30.4.2001 by [S.I. 2001/1394, art. 2, Sch.](#)

### *Enforcement*

#### **91 Offences.**

- (1) A person who provides immigration advice or immigration services in contravention of section 84 or of a restraining order is guilty of an offence and liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both; or
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.
- (2) “Restraining order” means—
  - (a) a direction given by the [<sup>F30</sup>First-tier Tribunal] under section 89(8) or paragraph 9(3) of Schedule 5; or
  - (b) an order made by a disciplinary body under section 90(1).
- (3) If an offence under this section committed by a body corporate is proved—
  - (a) to have been committed with the consent or connivance of an officer, or
  - (b) to be attributable to neglect on his part,the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.
- (4) “Officer”, in relation to a body corporate, means a director, manager, secretary or other similar officer of the body, or a person purporting to act in such a capacity.
- (5) If the affairs of a body corporate are managed by its members, subsection (3) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

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- (6) If an offence under this section committed by a partnership in Scotland is proved—
- (a) to have been committed with the consent or connivance of a partner, or
  - (b) to be attributable to neglect on his part,
- the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.
- (7) “Partner” includes a person purporting to act as a partner.

#### Textual Amendments

**F30** Words in s. 91(2)(a) substituted (18.1.2010) by [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), art. 1(1), [Sch. 2 para. 38](#) (with [Sch. 5](#))

## 92 Enforcement.

- (1) If it appears to the Commissioner that a person—
- (a) is providing immigration advice or immigration services in contravention of section 84 or of a restraining order, and
  - (b) is likely to continue to do so unless restrained,
- the Commissioner may apply to a county court for an injunction, or to the sheriff for an interdict, restraining him from doing so.
- (2) If the court is satisfied that the application is well-founded, it may grant the injunction or interdict in the terms applied for or in more limited terms.
- (3) “Restraining order” has the meaning given by section 91.

### [<sup>F31</sup>92A Investigation of offence: power of entry

- (1) On an application made by the Commissioner a justice of the peace may issue a warrant authorising the Commissioner to enter and search premises.
- (2) A justice of the peace may issue a warrant in respect of premises only if satisfied that there are reasonable grounds for believing that—
- (a) an offence under section 91 has been committed,
  - (b) there is material on the premises which is likely to be of substantial value (whether by itself or together with other material) to the investigation of the offence, and
  - (c) any of the conditions specified in subsection (3) is satisfied.
- (3) Those conditions are—
- (a) that it is not practicable to communicate with a person entitled to grant entry to the premises,
  - (b) that it is not practicable to communicate with a person entitled to grant access to the evidence,
  - (c) that entry to the premises will be prevented unless a warrant is produced, and
  - (d) that the purpose of a search may be frustrated or seriously prejudiced unless the Commissioner can secure immediate entry on arrival at the premises.
- (4) The Commissioner may seize and retain anything for which a search is authorised under this section.

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- (5) A person commits an offence if without reasonable excuse he obstructs the Commissioner in the exercise of a power by virtue of this section.
- (6) A person guilty of an offence under subsection (5) shall be liable on summary conviction to—
- (a) imprisonment for a term not exceeding six months,
  - (b) a fine not exceeding level 5 on the standard scale, or
  - (c) both.
- (7) In this section—
- (a) a reference to the Commissioner includes a reference to a member of his staff authorised in writing by him,
  - (b) a reference to premises includes a reference to premises used wholly or partly as a dwelling, and
  - (c) a reference to material—
    - (i) includes material subject to legal privilege within the meaning of the Police and Criminal Evidence Act 1984 (c. 60),
    - (ii) does not include excluded material or special procedure material within the meaning of that Act, and
    - (iii) includes material whether or not it would be admissible in evidence at a trial.
- (8) In the application of this section to Scotland—
- (a) a reference to a justice of the peace shall be taken as a reference to the sheriff,
  - (b) for sub-paragraph (i) of subsection (7)(c) there is substituted—
    - “(i) includes material comprising items subject to legal privilege (as defined by section 412 of the Proceeds of Crime Act 2002 (c. 29)),” and
  - (c) sub-paragraph (ii) of subsection (7)(c) shall be ignored.
- (9) In the application of this section to Northern Ireland the reference to the Police and Criminal Evidence Act 1984 shall be taken as a reference to the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)).]

#### Textual Amendments

**F31** S. 92A inserted (1.10.2004) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004](#) (c. 19), [ss. 38\(1\), 48\(3\)](#); [S.I. 2004/2523](#), art. 2, Sch.

#### [<sup>F32</sup>92B Advertising

- (1) A person commits an offence if—
- (a) he offers to provide immigration advice or immigration services, and
  - (b) provision by him of the advice or services would constitute an offence under section 91.
- (2) For the purpose of subsection (1) a person offers to provide advice or services if he—
- (a) makes an offer to a particular person or class of person,
  - (b) makes arrangements for an advertisement in which he offers to provide advice or services, or

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- (c) makes arrangements for an advertisement in which he is described or presented as competent to provide advice or services.
- (3) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (4) Subsections (3) to (7) of section 91 shall have effect for the purposes of this section as they have effect for the purposes of that section.
- (5) An information relating to an offence under this section may in England and Wales be tried by a magistrates' court if—
- (a) it is laid within the period of six months beginning with the date (or first date) on which the offence is alleged to have been committed, or
  - (b) it is laid—
    - (i) within the period of two years beginning with that date, and
    - (ii) within the period of six months beginning with a date certified by the Immigration Services Commissioner as the date on which the commission of the offence came to his notice.
- (6) In Scotland, proceedings for an offence under this section may be commenced—
- (a) at any time within the period of six months beginning with the date (or first date) on which the offence is alleged to have been committed, or
  - (b) at any time within both—
    - (i) the period of two years beginning with that date, and
    - (ii) the period of six months beginning with a date specified, in a certificate signed by or on behalf of the procurator fiscal, as the date on which evidence sufficient in his opinion to warrant such proceedings came to his knowledge,
 and any such certificate purporting to be so signed shall be deemed so signed unless the contrary is proved and be conclusive as to the facts stated in it.
- (7) Subsection (3) of section 136 of the Criminal Procedure (Scotland) Act 1995 (c. 46) (date on which proceedings are deemed commenced) has effect to the purposes of subsection (6) as it has effect for the purposes of that section.
- (8) A complaint charging the commission of an offence under this section may in Northern Ireland be heard and determined by a magistrates' court if—
- (a) it is made within the period of six months beginning with the date (or first date) on which the offence is alleged to have been committed, or
  - (b) it is made—
    - (i) within the period of two years beginning with that date, and
    - (ii) within the period of six months beginning with a date certified by the Immigration Services Commissioner as the date on which the commission of the offence came to his notice.]

#### Textual Amendments

**F32** S. 92B inserted (1.10.2004) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004](#) (c. 19), **ss. 39, 48(3)**; S.I. 2004/2523, art. 2, Sch.

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### Miscellaneous

## 93 Information.

- (1) No enactment or rule of law prohibiting or restricting the disclosure of information prevents a person from—
  - (a) giving the Commissioner information which is necessary for the discharge of his functions; or
  - (b) giving the [<sup>F33</sup>First-tier Tribunal] information which is necessary for the discharge of its functions.
- (2) No relevant person may at any time disclose information which—
  - (a) has been obtained by, or given to, the Commissioner under or for purposes of this Act,
  - (b) relates to an identified or identifiable individual or business, and
  - (c) is not at that time, and has not previously been, available to the public from other sources,unless the disclosure is made with lawful authority.
- (3) For the purposes of subsection (2), a disclosure is made with lawful authority only if, and to the extent that—
  - (a) it is made with the consent of the individual or of the person for the time being carrying on the business;
  - (b) it is made for the purposes of, and is necessary for, the discharge of any of the Commissioner’s functions under this Act or any Community obligation of the Commissioner;
  - (c) it is made for the purposes of any civil or criminal proceedings arising under or by virtue of this Part, or otherwise; or
  - (d) having regard to the rights and freedoms or legitimate interests of any person, the disclosure is necessary in the public interest.
- (4) A person who knowingly or recklessly discloses information in contravention of subsection (2) is guilty of an offence and liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum; or
  - (b) on conviction on indictment, to a fine.
- (5) “Relevant person” means a person who is or has been—
  - (a) the Commissioner;
  - (b) a member of the Commissioner’s staff; or
  - (c) an agent of the Commissioner.

#### Textual Amendments

**F33** Words in s. 93(1)(b) substituted (18.1.2010) by [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), art. 1(1), [Sch. 2 para. 39](#) (with [Sch. 5](#))

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