



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 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;

Status: This is the original version (as it was originally enacted).

“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;
- (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 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); and

“the Tribunal” means the Immigration Services Tribunal.

- (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.

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.

Status: This is the original version (as it was originally enacted).

- (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.

The general prohibition

84 Provision of immigration services

- (1) No person may provide immigration advice or immigration services unless he is a qualified person.
- (2) A person is a qualified person if—
 - (a) he is registered with the Commissioner or is employed by, or works under the supervision of, such a person;
 - (b) he is a member or employee of a body which is a registered person, or works under the supervision of such a member or employee;
 - (c) he is authorised by a designated professional body to practise as a member of the profession whose members are regulated by that body, or works under the supervision of such a person;
 - (d) he is registered with, or authorised by, a person in another EEA State responsible for regulating the provision in that EEA State of advice or services corresponding to immigration advice or immigration services or would be required to be so registered or authorised were he not exempt from such a requirement;
 - (e) he is authorised by a body regulating the legal profession, or any branch of it, in another EEA State to practise as a member of that profession or branch; or
 - (f) he is employed by a person who falls within paragraph (d) or (e) or works under the supervision of such a person or of an employee of such a person.
- (3) If a registered person's registration has limited effect (by virtue of paragraph 2(2) of Schedule 6), neither paragraph (a) nor (b) of subsection (2) authorises the provision of advice or services falling outside the scope of that registration.

Status: This is the original version (as it was originally enacted).

- (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.

85 Registration and exemption by the Commissioner

- (1) The Commissioner must prepare and maintain a register for the purposes of section 84(2)(a) and (b).
- (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.

86 Designated professional bodies

- (1) “Designated professional body” means—
 - (a) The Law Society;
 - (b) The Law Society of Scotland;
 - (c) The Law Society of Northern Ireland;
 - (d) The Institute of Legal Executives;
 - (e) The General Council of the Bar;
 - (f) The Faculty of Advocates; or
 - (g) The General Council of the Bar of Northern Ireland.
- (2) If the Secretary of State considers that a designated professional body has consistently failed to provide effective regulation of its members in their provision of immigration advice or immigration services, he may by order amend subsection (1) to remove the name of that body.
- (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 Scottish Legal Services Ombudsman, if the proposed order would affect a designated professional body in Scotland;
 - (d) consult the lay observers appointed under Article 42 of the 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 England and Wales or 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—
- (a) the designated judges, if the order affects a designated professional body in England and Wales;
 - (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
 - (b) report to the Secretary of State if he considers that a designated professional body is failing to provide effective regulation of its members in their provision of immigration advice or immigration services.
- (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.

The Immigration Services Tribunal

87 The Tribunal

- (1) There is to be a tribunal known as the Immigration Services Tribunal (referred to in this Part as “the Tribunal”).
- (2) Any person aggrieved by a relevant decision of the Commissioner may appeal to the 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; or
 - (f) which is recorded under paragraph 9(1)(a) of Schedule 5.
- (4) The Tribunal is also to have the function of hearing disciplinary charges laid by the Commissioner under paragraph 9(1)(e) of Schedule 5.
- (5) Schedule 7 makes further provision with respect to the Tribunal and its constitution and functions.

88 Appeal upheld by the Tribunal

- (1) This section applies if the Tribunal allows an appeal under section 87.
- (2) If the Tribunal considers it appropriate, it may direct the Commissioner—
 - (a) to register the applicant or to continue the applicant’s registration;
 - (b) 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;
 - (c) to restore an exemption granted under section 84(4)(a); or
 - (d) to quash a decision recorded under paragraph 9(1)(a) of Schedule 5 and the record of that decision.

89 Disciplinary charge upheld by the Tribunal

- (1) This section applies if the Tribunal upholds a disciplinary charge laid by the Commissioner under paragraph 9(1)(e) of Schedule 5 against a person (“the person charged”).
- (2) Subsection (3) applies if the person charged is—
 - (a) a registered person;
 - (b) a person employed by, or working under the supervision of, a registered person;
 - (c) a member or employee of a body which is a registered person; or
 - (d) a person working under the supervision of such a member or employee.
- (3) The Tribunal may—

- (a) direct the Commissioner to record the charge and the Tribunal’s decision on it for consideration when the registered person next applies for continued registration; or
 - (b) direct the registered person to apply to the Commissioner for continued registration without delay.
- (4) If the person charged is certified by the Commissioner as exempt under section 84(4) (a), the 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 Tribunal may direct him to repay to the clients concerned such portion of those fees as it may determine.
- (6) The 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 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 Tribunal may direct that the person charged or any person employed by him or working under his supervision is to be—
- (a) subject to such restrictions on the provision of immigration advice or immigration services as the Tribunal considers appropriate;
 - (b) suspended from providing immigration advice or immigration services for such period as the 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 Tribunal under subsection (8).

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—
- (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).

Status: This is the original version (as it was originally enacted).

- (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 works under the supervision 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.

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 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.
- (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.

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.

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 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.