

Changes to legislation: Immigration and Asylum Act 1999, SCHEDULE 5 is up to date with all changes known to be in force on or before 18 September 2018. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULES

SCHEDULE 5

Section 83.

THE IMMIGRATION SERVICES COMMISSIONER

PART I

REGULATORY FUNCTIONS

The Commissioner's rules

- 1 (1) The Commissioner may make rules regulating any aspect of the professional practice, conduct or discipline of—
- (a) registered persons, and
 - [^{F1}(b) those acting on behalf of registered persons,]
- in connection with the provision of immigration advice or immigration services.
- (2) Before making or altering any rules, the Commissioner must consult such persons appearing to him to represent the views of persons engaged in the provision of immigration advice or immigration services as he considers appropriate.
- (3) In determining whether a registered person is competent or otherwise fit to provide immigration advice or immigration services, the Commissioner may take into account any breach of the rules by—
- (a) that person; and
 - [^{F2}(b) any person acting on behalf of that person.]
- (4) The rules may, among other things, make provision requiring the keeping of accounts or the obtaining of indemnity insurance.

Annotations:

Amendments (Textual)

- F1** Sch. 5 para. 1(1)(b) substituted (1.10.2004) by
[Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c. 19\)](#)
- ,
[ss. 37\(5\)\(a\)](#)
- ,
[48\(3\)](#)
- ;
[S.I. 2004/2523](#)
- ,
[art. 2](#)
- ,
[Sch.](#)

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- F2** Sch. 5 para. 1(3)(b) substituted (1.10.2004) by
 Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19)
 ,
ss. 37(5)(b)
 ,
 48(3)
 ;
 S.I. 2004/2523
 ,
 art. 2
 ,
 Sch.

Commencement Information

- II** Sch. 5 para. 1 wholly in force at 30.10.2000; Sch. 5 para. 1 not in force at Royal Assent see s. 170(4);
 Sch. 5 para. 1(1)(2)(4) in force at 22.5.2000 by
 S.I. 2000/1282
 ,
 art. 2
 ,
Sch.
 ; Sch. 5 para. 1 in force so far as not already in force at 30.10.2000 by
 S.I. 2000/1985
 ,
art. 2 Sch.

- 2 (1) The Commissioner's rules must be made or altered by an instrument in writing.
- (2) Such an instrument must specify that it is made under this Schedule.
- (3) Immediately after such an instrument is made, it must be printed and made available to the public.
- (4) The Commissioner may charge a reasonable fee for providing a person with a copy of the instrument.
- (5) A person is not to be taken to have contravened a rule made by the Commissioner if he shows that at the time of the alleged contravention the instrument containing the rule had not been made available in accordance with this paragraph.
- (6) The production of a printed copy of an instrument purporting to be made by the Commissioner on which is endorsed a certificate signed by an officer of the Commissioner authorised by him for that purpose and stating—
- (a) that the instrument was made by the Commissioner,
 - (b) that the copy is a true copy of the instrument, and
 - (c) that on a specified date the instrument was made available to the public in accordance with this paragraph,
- is evidence (or in Scotland sufficient evidence) of the facts stated in the certificate.
- (7) A certificate purporting to be signed as mentioned in sub-paragraph (6) is to be treated as having been properly signed unless the contrary is shown.

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- (8) A person who wishes in any legal proceedings to rely on an instrument containing the Commissioner’s rules may require him to endorse a copy of the instrument with a certificate of the kind mentioned in sub-paragraph (6).

Annotations:

Commencement Information

- I2** Sch. 5 para. 2 wholly in force at 30.10.2000; Sch. 5 para. 2 not in force at Royal Assent see s. 170(4); Sch. 5 para. 2(1)-(4)(6)-(8) in force at 22.5.2000 by [S.I. 2000/1282](#)
- ,
[art. 2](#)
- ,
Sch.
;Sch. 5 para. 2 in force so far as not already in force at 30.10.2000 by [S.I. 2000/1985](#)
- ,
[art. 2](#)
- ,
Sch.2

Code of Standards

- 3 (1) The Commissioner must prepare and issue a code setting standards of conduct which those to whom the code applies are expected to meet.
- (2) The code is to be known as the Code of Standards but is referred to in this Schedule as “the Code”.
- (3) The Code is to apply to any person providing immigration advice or immigration services other than—
- (a) a person who is authorised by a designated professional body to practise as a member of the profession whose members are regulated by that body;
 - [^{F3}(aa) a person who is authorised by a designated qualifying regulator to provide immigration advice or immigration services;]
 - [^{F4}(b) a person who is acting on behalf of a person who is within paragraph (a) [^{F5}or (aa)] ;]
 - (c) a person mentioned in section 84(6).
- (4) It is the duty of any person to whom the Code applies to comply with its provisions in providing immigration advice or immigration services.
- (5) If the Commissioner alters the Code, he must re-issue it.
- (6) Before issuing the Code or altering it, the Commissioner must consult—
- (a) each of the designated professional bodies;
 - [^{F6}(aa) each of the designated qualifying regulators;]
 - ^{F7}(b)
 - (c) the Lord President of the Court of Session;
 - (d) the Lord Chief Justice of Northern Ireland; and

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(e) such other persons appearing to him to represent the views of persons engaged in the provision of immigration advice or immigration services as he considers appropriate.

(7) The Commissioner must publish the Code in such form and manner as the Secretary of State may direct.

Annotations:

Amendments (Textual)

- F3** Sch. 5 para. 3(3)(aa) inserted (1.4.2011) by
 Legal Services Act 2007 (c. 29)
- ›
- s. 211(2)
- ›
- Sch. 18 para. 17(2)(a)**
 (with
 ss. 29
- ›
- 192
- ›
- 193
-);
- S.I. 2011/720
- ›
- art. 2(c)
- F4** Sch. 5 para. 3(3)(b) substituted (1.10.2004) by
 Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19)
- ›
- ss. 37(5)(c)**
- ›
- 48(3)
- ;
- S.I. 2004/2523
- ›
- art. 2
- ›
- Sch.
- F5** Words in Sch. 5 para. 3(3)(b) inserted (1.4.2011) by
 Legal Services Act 2007 (c. 29)
- ›
- s. 211(2)
- ›
- Sch. 18 para. 17(2)(b)**
 (with
 ss. 29
- ›
- 192
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- 193
-);
- S.I. 2011/720
- ›

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art. 2(c)
F6 Sch. 5 para. 3(6)(aa) inserted (1.4.2011) by
Legal Services Act 2007 (c. 29)

,
s. 211(2)

,
Sch. 18 para. 17(2)(c)

(with
ss. 29

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192

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193

);
S.I. 2011/720

,
art. 2(c)

F7 Sch. 5 para. 3(6)(b) repealed (1.1.2010) by
Legal Services Act 2007 (c. 29)

,
s. 211(2)

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Sch. 18 para. 17(2)(d)

,
Sch. 23

(with
ss. 29

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192

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193

);
S.I. 2009/3250

,
art. 2(i)(xi)

Commencement Information

I3 Sch. 5 para. 3 wholly in force at 30.10.2000; Sch. 5 para. 3 not in force at Royal Assent see s. 170(4);
Sch. 5 para. 3(1)-(3)(5)-(7) in force at 22.5.2000 by
S.I. 2000/1282

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art. 2

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Sch.

; Sch. 5 para. 3 in force so far as not already in force at 30.10.2000 by
S.I. 2000/1985

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art. 2

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Extension of scope of the Code

- 4 (1) The Secretary of State may by order provide for the provisions of the Code, or such provisions of the Code as may be specified by the order, to apply to—
- (a) persons authorised by any designated professional body to practise as a member of the profession whose members are regulated by that body; and
 - [^{F8}(b) persons acting on behalf of persons who are within paragraph (a).]
- (2) If the Secretary of State is proposing to act under sub-paragraph (1) he must, before doing so, consult—
- (a) the Commissioner;
 - [^{F9}(b)
 - (c) the [^{F10}Scottish Legal Complaints Commission], if the proposed order would affect a designated professional body in Scotland;
 - (d) the lay observers appointed under Article 42 of the ^{M1}Solicitors (Northern Ireland) Order 1976, if the proposed order would affect a designated professional body in Northern Ireland.
- (3) An order under sub-paragraph (1) requires the approval of—
- (a) the [^{F11}Department of Justice in Northern Ireland] , if it affects a designated professional body in ^{F12}... Northern Ireland;
 - (b) the Scottish Ministers, if it affects a designated professional body in Scotland.
- [^{F13}(4) Before deciding whether or not to give its approval under sub-paragraph (3)(a), the Department of Justice in Northern Ireland must consult the Lord Chief Justice of Northern Ireland.]
- (5) Before deciding whether or not to give their approval under sub-paragraph (3)(b), the Scottish Ministers must consult the Lord President of the Court of Session.

Annotations:

Amendments (Textual)

- F8** Sch. 5 para. 4(1)(b) substituted (1.10.2004) by
[Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c. 19\)](#)
 ,
[ss. 37\(5\)\(d\)](#)
 ,
[48\(3\)](#)
 ;
[S.I. 2004/2523](#)
 ,
[art. 2](#)
 ,
[Sch.](#)
- F9** Sch. 5 para. 4(2)(b) repealed (1.1.2010) by
[Legal Services Act 2007 \(c. 29\)](#)
 ,
[s. 211\(2\)](#)
 ,
[Sch. 18 para. 17\(3\)\(a\)](#)

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Sch. 23
(with
ss. 29
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192
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S.I. 2009/3250
,
art. 2(i)(xi)
- F10** Words in Sch. 5 para. 4(2)(c) substituted (1.10.2008) by
Legal Services Act 2007 (c. 29)
- ,
ss. 196(2)(b)
,
211(2)
(with
ss. 29
,
192
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193
);
S.I. 2008/1436
,
art. 3(a)
- F11** Words in Sch. 5 para. 4(3)(a) substituted (18.10.2012) by
The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2012 (S.I.
2012/2595)
- ,
arts. 1(2)
,
9(5)(a)
(with
arts. 24-28
)
- F12** Words in Sch. 5 para. 4(3)(a) repealed (1.1.2010) by
Legal Services Act 2007 (c. 29)
- ,
s. 211(2)
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Sch. 18 para. 17(3)(b)
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Sch. 23
(with
ss. 29
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S.I. 2009/3250

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art. 2(i)(xi)

F13 Sch. 5 para. 4(4) substituted (18.10.2012) by

The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2012 (S.I. 2012/2595)

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arts. 1(2)

,

9(5)(b)

(with

arts. 24-28

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Marginal Citations

M1 S.I. 1976/582 (N.I. 12)

.

f^{F14} Inspections

Annotations:

Amendments (Textual)

F14 Sch. 5 para. 4A and cross-heading inserted (28.7.2014) by
 Immigration Act 2014 (c. 22)

,

s. 75(3)

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Sch. 7 para. 6

;

S.I. 2014/1820

,

art. 3(aa)

4A The Commissioner may carry out inspections of the activities and businesses of registered persons.]

Investigation of complaints

- 5 (1) The Commissioner must establish a scheme (“the complaints scheme”) for the investigation by him of relevant complaints made to him in accordance with the provisions of the scheme.
- (2) Before establishing the scheme or altering it, the Commissioner must consult—
- (a) each of the designated professional bodies; and
 - (b) such other persons appearing to him to represent the views of persons engaged in the provision of immigration advice or immigration services as he considers appropriate.
- (3) A complaint is a relevant complaint if it relates to—

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No the competence or fitness to provide immigration advice or immigration
commentary services of a person who, at the time to which the complaint relates, was a
item registered person,]
could
be
found
for
this
reference
key-

5f4735e60d721aa948a36dfcc^{F15}(za)

(a) the competence or fitness of ^{F16}any other person] to provide immigration advice or immigration services,

^{F17}(aa) the competence or fitness of a person who, at the time to which the complaint relates, was acting on behalf of a registered person,]

(b) the competence or fitness of ^{F18}any other person]^{F19}acting on behalf of] a person providing immigration advice or immigration services,

(c) an alleged breach of the Code,

(d) an alleged breach of one or more of the Commissioner's rules by ^{F20}a person who, at the time to which the complaint relates, was a registered person or a person acting on behalf of a registered person] , or

^{F21}(e) an alleged breach of a rule of a relevant regulatory body,]

^{F22}but not if the complaint is excluded by sub-paragraph (3A).]

^{F23}(3A) A complaint is excluded if—

(a) it relates to a person who is excluded from the application of subsection (1) of section 84 by subsection (6) of that section, or

(b) it relates to a person within section 84(2)(ba).]

(4) The Commissioner may, on his own initiative, investigate any matter which he would have power to investigate on a complaint made under the complaints scheme.

(5) In investigating any such matter on his own initiative, the Commissioner must proceed as if his investigation were being conducted in response to a complaint made under the scheme.

Annotations:

Amendments (Textual)

F15 Sch. 5 para. 5(3)(za) inserted (17.11.2014) by
[Immigration Act 2014 \(c. 22\)](#)

,
s. 75(3)

,
Sch. 7 para. 7(2)(a)

;
S.I. 2014/2771

,
art. 5(c)

F16 Words in Sch. 5 para. 5(3)(a) substituted (17.11.2014) by
[Immigration Act 2014 \(c. 22\)](#)

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- ›
s. 75(3)
- ›
Sch. 7 para. 7(2)(b)
- ›
S.I. 2014/2771
- ›
art. 5(c)
- F17** Sch. 5 para. 5(3)(aa) inserted (17.11.2014) by
Immigration Act 2014 (c. 22)
- ›
s. 75(3)
- ›
Sch. 7 para. 7(2)(c)
- ›
S.I. 2014/2771
- ›
art. 5(c)
- F18** Words in Sch. 5 para. 5(3)(b) substituted (17.11.2014) by
Immigration Act 2014 (c. 22)
- ›
s. 75(3)
- ›
Sch. 7 para. 7(2)(d)
- ›
S.I. 2014/2771
- ›
art. 5(c)
- F19** Words in Sch. 5 para. 5(3)(b) substituted (1.10.2004) by
Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19)
- ›
ss. 37(5)(e)
- ›
48(3)
- ›
S.I. 2004/2523
- ›
art. 2
- ›
Sch.
- F20** Words in Sch. 5 para. 5(3)(d) substituted (17.11.2014) by
Immigration Act 2014 (c. 22)
- ›
s. 75(3)
- ›
Sch. 7 para. 7(2)(e)
- ›
S.I. 2014/2771
- ›
art. 5(c)
- F21** Sch. 5 para. 5(3)(e) substituted (1.10.2004) by
Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19)
- ›

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ss. 37(5)(f)

,
48(3)
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S.I. 2004/2523

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art. 2

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Sch.

F22 Words in Sch. 5 para. 5(3) substituted (1.4.2011) by
Legal Services Act 2007 (c. 29)

,
s. 211(2)

,
Sch. 18 para. 17(4)(a)

(with
ss. 29

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193

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S.I. 2011/720

,
art. 2(c)

F23 Sch. 5 para. 5(3A) inserted (1.4.2011) by
Legal Services Act 2007 (c. 29)

,
s. 211(2)

,
Sch. 18 para. 17(4)(b)

(with
ss. 29

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192

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193

);
S.I. 2011/720

,
art. 2(c)

Modifications etc. (not altering text)

C1 Sch. 5 para. 5(3)(za) modified (17.11.2014) by
Immigration Act 2014 (c. 22)

,
s. 75(3)

,
Sch. 9 paras. 68

,
69

;
S.I. 2014/2771

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,
 art. 5(d)
C2 Sch. 5 para. 5(3)(aa) modified (17.11.2014) by
 Immigration Act 2014 (c. 22)

,
 s. 75(3)

,
 Sch. 9 paras. 68

,
69

;
 S.I. 2014/2771

,
 art. 5(d)
C3 Sch. 5 para. 5(3)(d) modified (17.11.2014) by
 Immigration Act 2014 (c. 22)

,
 s. 75(3)

,
Sch. 9 para. 68

;
 S.I. 2014/2771

,
 art. 5(d)

Commencement Information

I4 Sch. 5 para. 5 wholly in force at 30.10.2000; Sch. 5 para. 5 not in force at Royal Assent see s. 170(4);
 Sch. 5 para. 5(1)-(3) in force at 22.5.2000 by
 S.I. 2000/1282

,
 art. 2

,
Sch.

;Sch. 5 para. 5 in force so far as not already in force at 30.10.2000 by
 S.I. 2000/1985

,
 art. 2

,
Sch.

- 6 (1) The complaints scheme must provide for a person who is the subject of an investigation under the scheme to be given a reasonable opportunity to make representations to the Commissioner.
- (2) Any person who is the subject of an investigation under the scheme must—
- (a) take such steps as are reasonably required to assist the Commissioner in his investigation; and
 - (b) comply with any reasonable requirement imposed on him by the Commissioner.
- (3) If a person fails to comply with sub-paragraph (2)(a) or with a requirement imposed under sub-paragraph (2)(b) the Commissioner may—
- (a) in the case of a registered person, cancel his registration;

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^{F24}(b)

[^{F25}(c) in any other case, refer the matter to any relevant regulatory body.]

Annotations:

Amendments (Textual)

F24 Sch. 5 para. 6(3)(b) omitted (17.11.2014) by virtue of
[Immigration Act 2014 \(c. 22\)](#)

,
[s. 75\(3\)](#)

,
Sch. 7 para. 2(2)(f)

,
[S.I. 2014/2771](#)

,
[art. 5\(c\)](#)

F25 Sch. 5 para. 6(3)(c) substituted (1.10.2004) by
[Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c. 19\)](#)

,
ss. 37(5)(g)

,
[48\(3\)](#)

,
[S.I. 2004/2523](#)

,
[art. 2](#)

,
[Sch.](#)

Commencement Information

I5 Sch. 5 para. 6 wholly in force at 30.10.2000; Sch. 5 para. 6 not in force at Royal Assent see s. 170(4);
Sch. 5 para. 6(1) in force at 22.5.2000 by
[S.I. 2000/1282](#)

,
[art. 2](#)

,
Sch.

;Sch. 5 para. 6 in force at 30.10.2000 by
[S.I. 2000/1985](#)

,
[art. 2](#)

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Sch.

F26
...

Annotations:

Amendments (Textual)

F26 Sch. 5 para. 7 and cross-heading omitted (17.11.2014) by virtue of

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Immigration Act 2014 (c. 22)
,
s. 75(3)
,
Sch. 7 para. 8(1)
;
S.I. 2014/2771
,
art. 5(c)

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.....

Determination of complaints

- 8 (1) On determining a complaint under the complaints scheme, the Commissioner must give his decision in a written statement.
- (2) The statement must include the Commissioner’s reasons for his decision.
- (3) A copy of the statement must be given by the Commissioner to—
 - (a) the person who made the complaint; and
 - (b) the person who is the subject of the complaint.

- 9 (1) On determining a complaint under the complaints scheme, the Commissioner may—
 - [^{F27}(a) if the person to whom the complaint relates was at the time to which the complaint relates—
 - (i) a registered person, or
 - (ii) a person acting on behalf of a registered person,
 record the complaint and the decision on it to be considered in connection with the next relevant application;]
 - [^{F28}(b)]
 - [^{F29}(c) refer the complaint and his decision on it to a relevant regulatory body;]
 - [^{F30}(d)]
 - (e) lay before the [^{F31}First-tier Tribunal] a disciplinary charge against a relevant person.

- [^{F32}(1A) In sub-paragraph (1)(a) “relevant application” means—
 - (a) if the registered person referred to in that sub-paragraph is still registered, an application by that person for continued registration, and
 - (b) otherwise, an application by that person for registration.]

- [^{F33}(1B) Sub-paragraph (1)(a) is subject to paragraph 4A(e) of Schedule 6 (duty of Commissioner to cancel registration of a person who is no longer competent or is otherwise unfit).]

- (2) Sub-paragraph (3) applies if—
 - (a) the [^{F34}First-tier Tribunal] is considering a disciplinary charge against a relevant person; and
 - (b) the Commissioner asks it to exercise its powers under that sub-paragraph.
- (3) The [^{F35}First-tier Tribunal] may give directions (which are to have effect while it is dealing with the charge)—

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- [^{F36}(a) imposing restrictions on the provision of immigration advice or immigration services by the relevant person or by a person acting on his behalf or under his supervision;]
- [^{F36}(b) prohibiting the provision of immigration advice or immigration services by the relevant person or a person acting on his behalf or under his supervision.]

[^{F37}(4) Relevant person” means—

- (a) a person who, at the time to which the charge relates, was providing immigration advice or immigration services and was—
 - (i) a registered person, or
 - (ii) a person acting on behalf of a registered person;
- (b) a person providing immigration advice or immigration services who is—
 - (i) a person to whom section 84(4)(d) applies, or
 - (ii) a person employed by, or working under the supervision of, such a person.]

Annotations:

Amendments (Textual)

- F27** Sch. 5 para. 9(1)(a) substituted (17.11.2014) by
[Immigration Act 2014 \(c. 22\)](#)
,
[s. 75\(3\)](#)
,
Sch. 7 para. 7(3)
,
[S.I. 2014/2771](#)
,
[art. 5\(c\)](#)
- F28** Sch. 5 para. 9(1)(b) omitted (17.11.2014) by virtue of
[Immigration Act 2014 \(c. 22\)](#)
,
[s. 75\(3\)](#)
,
Sch. 7 para. 4(2)(a)
,
[S.I. 2014/2771](#)
,
[art. 5\(c\)](#)
- F29** Sch. 5 para. 9(1)(c) substituted (1.10.2004) by
[Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c. 19\)](#)
,
ss. 37(5)(i)
,
[48\(3\)](#)
,
[S.I. 2004/2523](#)
,
[art. 2](#)
,
[Sch.](#)
- F30** Sch. 5 para. 9(1)(d) omitted (17.11.2014) by virtue of

Changes to legislation: *Immigration and Asylum Act 1999, SCHEDULE 5 is up to date with all changes known to be in force on or before 18 September 2018. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Immigration Act 2014 (c. 22)

,
s. 75(3)

,
Sch. 7 para. 2(2)(f)

;
S.I. 2014/2771

,
art. 5(c)

F31 Words in Sch. 5 para. 9(1)(e) substituted (18.1.2010) by
The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22)

,
art. 1(1)

,
Sch. 2 para. 40

(with
Sch. 5
)

F32 Sch. 5 para. 9(1A) inserted (17.11.2014) by
Immigration Act 2014 (c. 22)

,
s. 75(3)

,
Sch. 7 para. 7(4)

;
S.I. 2014/2771

,
art. 5(c)

F33 Sch. 5 para. 9(1B) inserted (17.11.2014) by
Immigration Act 2014 (c. 22)

,
s. 75(3)

,
Sch. 7 para. 4(2)(b)

;
S.I. 2014/2771

,
art. 5(c)

F34 Words in Sch. 5 para. 9(2)(a) substituted (18.1.2010) by
The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22)

,
art. 1(1)

,
Sch. 2 para. 40

(with
Sch. 5
)

F35 Words in Sch. 5 para. 9(3) substituted (18.1.2010) by
The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22)

,
art. 1(1)

,
Sch. 2 para. 40

Changes to legislation: Immigration and Asylum Act 1999, SCHEDULE 5 is up to date with all changes known to be in force on or before 18 September 2018. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

(with
Sch. 5
)

F36 Sch. 5 para. 9(3)(a)(b) substituted (1.10.2004) by
Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19)

,
ss. 37(5)(j)
,
48(3)
;

S.I. 2004/2523

,
art. 2

,
Sch.

F37 Sch. 5 para. 9(4) substituted (17.11.2014) by
Immigration Act 2014 (c. 22)

,
s. 75(3)

,
Sch. 7 para. 7(5)

,
S.I. 2014/2771

,
art. 5(c)

Modifications etc. (not altering text)

C4 Sch. 5 para. 9(1)(a) modified (17.11.2014) by
Immigration Act 2014 (c. 22)

,
s. 75(3)

,
Sch. 9 paras. 68

,
69

,
S.I. 2014/2771

,
art. 5(d)

C5 Sch. 5 para. 9(1A) modified (17.11.2014) by
Immigration Act 2014 (c. 22)

,
s. 75(3)

,
Sch. 9 paras. 68

,
69

,
S.I. 2014/2771

,
art. 5(d)

C6 Sch. 5 para. 9(4)(a) modified (17.11.2014) by
Immigration Act 2014 (c. 22)

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,
 s. 75(3)
 ,
 Sch. 9 paras. 68
 ,
69
 ;
 S.I. 2014/2771
 ,
 art. 5(d)

Complaints referred to designated professional bodies

- 10 (1) This paragraph applies if the Commissioner refers a complaint to a designated professional body under paragraph 9(1)(c).
- (2) The Commissioner may give directions setting a timetable to be followed by the designated professional body—
- (a) in considering the complaint; and
 - (b) if appropriate, in taking disciplinary proceedings in connection with the complaint.
- (3) In making his annual report to the Secretary of State under paragraph 21, the Commissioner must take into account any failure of a designated professional body to comply (whether wholly or in part) with directions given to it under this paragraph.
- (4) Sub-paragraph (5) applies if the Commissioner or the Secretary of State considers that a designated professional body has persistently failed to comply with directions given to it under this paragraph.
- (5) The Commissioner must take the failure into account in determining whether to make a report under section 86(9)(b) and the Secretary of State must take it into account in determining whether to make an order under section 86(2).

^{F38}Power of entry and inspection

Annotations:

Amendments (Textual)

F38 Sch. 5 para. 10A and cross-heading inserted (17.11.2014) by
[Immigration Act 2014 \(c. 22\)](#)

,
 s. 75(3)
 ,
Sch. 7 para. 8(2)
 ;
 S.I. 2014/2771
 ,
 art. 5(c)

- 10A (1) On an application made by the Commissioner a justice of the peace (or in Scotland, the sheriff) may issue a warrant authorising the Commissioner to enter premises.

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- (2) A justice of the peace or sheriff may issue a warrant in respect of premises if satisfied that there are reasonable grounds for believing that—
 - (a) the premises are being used, or have been used, in connection with the provision of immigration advice or immigration services by a registered person,
 - (b) entry to the premises is reasonably required for the exercise of any of the Commissioner's functions, and
 - (c) entry to the premises may be prevented or delayed unless a warrant is produced.
- (3) The Commissioner may enter premises by virtue of this paragraph only at a reasonable hour.
- (4) Where the Commissioner enters premises by virtue of this paragraph the Commissioner may—
 - (a) take onto the premises any equipment that appears to the Commissioner to be necessary;
 - (b) require any person on the premises to produce any relevant document and, if the document is produced, to provide any explanation of it;
 - (c) require any person on the premises to state, to the best of the person's knowledge and belief, where any relevant document is to be found;
 - (d) take copies of, or extracts from, any relevant document on the premises which is produced;
 - (e) require any relevant information which is held in a computer and is accessible from the premises to be produced in a form—
 - (i) in which it can be taken away; and
 - (ii) in which it is visible and legible.
- (5) For the purposes of sub-paragraph (4), a document or information is “relevant” if the document or information relates to any matter connected with the provision of immigration advice or immigration services.
- (6) The powers conferred on the Commissioner by sub-paragraphs (1) to (5) may also be exercised by—
 - (a) a member of the Commissioner's staff authorised by the Commissioner in writing, and
 - (b) if the Commissioner so determines, a person appointed by the Commissioner to make a report on the provision of immigration advice or immigration services from the premises in question.
- (7) If a registered person fails without reasonable excuse to allow access under this paragraph to any premises under the person's occupation or control, the Commissioner may cancel the person's registration.
- (8) The Commissioner may also cancel the registration of a registered person who—
 - (a) without reasonable excuse fails to comply with a requirement imposed under sub-paragraph (4);
 - (b) intentionally delays or obstructs any person exercising functions under this paragraph; or
 - (c) fails to take reasonable steps to prevent an employee of the registered person from obstructing any person exercising such functions.

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(9) In this paragraph “premises” includes premises used wholly or partly as a dwelling.]

Annotations:

Modifications etc. (not altering text)

- C7 Sch. 5 para. 10A(2)(a) modified (17.11.2014) by
[Immigration Act 2014 \(c. 22\)](#)
 ;
[Sch. 9 paras 69\(2\)](#)
 ;
[S.I. 2014/2771](#)
 ;
[art. 5\(d\)](#)

PART II

COMMISSIONER’S STATUS, REMUNERATION AND STAFF ETC

Status

- 11 (1) The Commissioner is to be a corporation sole.
- (2) The Commissioner and the members of the Commissioner’s staff are not to be regarded as the servants or agents of the Crown or as having any status, privilege or immunity of the Crown.

Period of office

- 12 (1) The Commissioner—
- (a) is to hold office for a term of five years; but
 - (b) may resign at any time by notice in writing given to the Secretary of State.
- (2) The Secretary of State may dismiss the Commissioner—
- (a) on the ground of incapacity or misconduct; or
 - (b) if he is satisfied—
 - (i) that he has been convicted of a criminal offence; or
 - (ii) that a bankruptcy order has been made against him, or his estate has been sequestrated, or he has made a composition or arrangement with, or granted a trust deed for, his creditors.
- (3) The Commissioner is eligible for re-appointment when his term of office ends.

Terms and conditions of appointment

- 13 Subject to the provisions of this Schedule, the Commissioner is to hold office on such terms and conditions as the Secretary of State may determine.

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Remuneration, expenses and pensions

- 14 (1) There is to be paid to the Commissioner such remuneration and expenses as the Secretary of State may determine.
- (2) The Secretary of State may pay, or provide for the payment of, such pensions, allowances or gratuities to or in respect of the Commissioner as he may determine.

Compensation

- 15 If a person ceases to be the Commissioner, otherwise than when his term of office ends, and it appears to the Secretary of State that there are special circumstances which make it right for him to receive compensation, the Secretary of State may make a payment to him of such amount as the Secretary of State may determine.

Deputy Commissioner

- 16 (1) The Secretary of State must appoint a person to act as Deputy Commissioner.
- (2) During any vacancy in the office of Commissioner, or at any time when he is unable to discharge his functions, the Deputy Commissioner may act in his place.
- (3) Paragraphs 11(2) and 12 to 15 apply to the Deputy Commissioner as they apply to the Commissioner.

Staff

- 17 (1) Subject to obtaining the approval of the Secretary of State as to numbers and terms and conditions of service, the Commissioner may appoint such staff as he considers appropriate.
- (2) Subject to obtaining the approval of the Secretary of State, the Commissioner may pay, or provide for the payment of, such pensions, allowances or gratuities (including by way of compensation for loss of office or employment) to or in respect of his staff as he considers appropriate.
- (3) Any functions of the Commissioner may, to the extent authorised by him, be performed by the Deputy Commissioner or any of his staff.
- (4) The ^{M2}Employers' Liability (Compulsory Insurance) Act 1969 is not to require insurance to be effected by the Commissioner.

Annotations:

Marginal Citations

M2 1969 c. 57

Expenditure

- 18 The Secretary of State may pay to the Commissioner—
- (a) any expenses incurred or to be incurred by the Commissioner in respect of his staff; and

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- (b) with the approval of the Treasury, such other sums for enabling the Commissioner to perform his functions as the Secretary of State thinks fit.

Receipts

- 19 (1) Subject to any general or specific directions given to him by the Secretary of State, sums received by the Commissioner in the exercise of his functions must be paid to the Secretary of State.
- (2) Sums received by the Secretary of State under this paragraph must be paid into the Consolidated Fund.
- (3) The approval of the Treasury is required for any direction given under this paragraph.

Accounts and records

- 20 (1) The Commissioner must—
- (a) keep proper accounts and proper records in relation to his accounts;
 - (b) prepare a statement of accounts for each financial year; and
 - (c) send copies of the statement to the Secretary of State and to the Comptroller and Auditor General on or before the specified date.
- (2) The statement of accounts must be in such form as the Secretary of State may, with the approval of the Treasury, direct.
- (3) The Comptroller and Auditor General must—
- (a) examine, certify and report on each statement received by him under this paragraph; and
 - (b) lay copies of each statement and of his report before each House of Parliament.
- (4) “Financial year” means the period of 12 months beginning with 1st April.
- (5) “Specified date” means—
- (a) 31st August next following the end of the year to which the statement relates; or
 - (b) such earlier date after the end of that year as the Treasury may direct.

Annual report

- 21 (1) The Commissioner must, as soon as is practicable after the end of each financial year, report to the Secretary of State on the performance of his functions in that year.
- [^{F39}(2) The report must, in particular, set out the Commissioner’s opinion as to the extent to which each designated professional body has—
- (a) provided effective regulation of its members in their provision of immigration advice or immigration services, and
 - (b) complied with requests of the Commissioner for the provision of information.]
- (3) The Secretary of State must lay a copy of the report before each House of Parliament.
- (4) “Financial year” has the same meaning as in paragraph 20.

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Annotations:

Amendments (Textual)

- F39** Sch. 5 para. 21(2) substituted (1.10.2004) by
[Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c. 19\)](#)
,
ss. 41(6)
,
48(3)
;
[S.I. 2004/2523](#)
,
[art. 2](#)
,
[Sch.](#)

Proof of instruments

- 22 A document purporting to be an instrument issued by the Commissioner and to be signed by or on behalf of the Commissioner is to be received in evidence and treated as such an instrument unless the contrary is shown.

Disqualification for House of Commons

- 23 In Part III of Schedule 1 to the ^{M3}House of Commons Disqualification Act 1975 (offices disqualifying for membership), insert at the appropriate place—

“The Immigration Services Commissioner

The Deputy Immigration Services Commissioner”.

Annotations:

Marginal Citations

- M3** [1975 c. 24](#)
.

Disqualification for Northern Ireland Assembly

- 24 In Part III of Schedule 1 to the ^{M4}Northern Ireland Assembly Disqualification Act 1975 (offices disqualifying for membership), insert at the appropriate place—

“The Immigration Services Commissioner

The Deputy Immigration Services Commissioner”.

Annotations:

Marginal Citations

- M4** [1975 c. 25](#)
.

Changes to legislation: *Immigration and Asylum Act 1999, SCHEDULE 5 is up to date with all changes known to be in force on or before 18 September 2018. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

The Parliamentary Commissioner Act 1967 (c.13)

- 25 In Schedule 2 of the Parliamentary Commissioner Act 1967 (departments and authorities subject to investigation) insert, at the appropriate place, “ The Immigration Services Commissioner ”.

Changes to legislation:

Immigration and Asylum Act 1999, SCHEDULE 5 is up to date with all changes known to be in force on or before 18 September 2018. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

Changes and effects yet to be applied to :

- Sch. 5 para. 4(2)(d) words substituted by
2016 c. 14 (N.I.)
Sch. 4
para. 6

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

- Act amendment to earlier affecting provision S.I. 1994/1405, art. 7 by
S.I. 2007/3579
art. 3(c)

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 72(10) repealed by
2004 c. 19
Sch. 4
- s. 94(2A)-(2C) inserted by
2016 c. 19
Sch. 11
para. 3(3)
- s. 94(2D) inserted by
2016 c. 19
Sch. 11
para. 7(4)
- s. 94(3)(3A) substituted for s. 94(3) by
2002 c. 41
s. 44(4)
(This amendment is repealed (prosp.) by 2016 c. 19, Sch. 11 para. 41)
- s. 94(3A)-(3D) inserted by
2016 c. 19
Sch. 11
para. 3(5)
- s. 95A inserted by
2016 c. 19
Sch. 11
para. 9
- s. 96(1A) inserted by
2016 c. 19
Sch. 11
para. 10(3)
- s. 97(8)(9) inserted by
2016 c. 19
Sch. 11
para. 11(4)
- s. 98A inserted by
2016 c. 19
Sch. 11
para. 13
- s. 103(4)(a) words substituted by
2004 c. 19

- s. 10(4)(b)
- s. 103(5)(b) word substituted by
S.I. 2008/2833
Sch. 3
para. 183(ii)
- s. 103A(1) words substituted by
2004 c. 19
s. 10(5)
- s. 103A(1) heading words substituted by
2004 c. 19
s. 10(5)
- s. 103A(1) words substituted by
S.I. 2008/2833
Sch. 3
para. 184
- s. 125(2)(ba) inserted by
2016 c. 19
Sch. 11
para. 22(3)(b)
- s. 146(2)(za) inserted by
2016 c. 19
s. 44(9)
- s. 166(5)(ca) substituted for word in s. 166(5)(c) by
2016 c. 19
Sch. 11
para. 24(2)
- s. 166(5A)(5B) inserted by
2016 c. 19
Sch. 11
para. 24(3)
- s. 166(6)(aa) substituted for word in s. 166(6)(a) by
2016 c. 19
Sch. 11
para. 24(4)
- Sch. 2 para. 21 modified by
2002 c. 41
s. 23(2)(a)
- Sch. 3 para. 2(5) modified by
2002 c. 41
s. 23(2)(b)