

SCHEDULES

SCHEDULE 5

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
 - (b) those employed by, or working under the supervision 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
 - (b) any person employed by, or working under the supervision of, that person.
- (4) The rules may, among other things, make provision requiring the keeping of accounts or the obtaining of indemnity insurance.
- 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,

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- (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.
- (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).

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;
 - (b) a person who works under the supervision of such a person; or
 - (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;
 - (b) the designated judges;
 - (c) the Lord President of the Court of Session;
 - (d) the Lord Chief Justice of Northern Ireland; and
 - (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.

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
 - (b) persons working under the supervision of such persons.
 - (2) If the Secretary of State is proposing to act under sub-paragraph (1) he must, before doing so, consult—

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- (a) the Commissioner;
 - (b) the Legal Services Ombudsman, if the proposed order would affect a designated professional body in England and Wales;
 - (c) the Scottish Legal Services Ombudsman, if the proposed order would affect a designated professional body in Scotland;
 - (d) 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.
- (3) An order under sub-paragraph (1) 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.
- (4) Before deciding whether or not to give his approval under sub-paragraph (3)(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.
- (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.

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—
- (a) the competence or fitness of a person to provide immigration advice or immigration services,
 - (b) the competence or fitness of a person employed by, or working under the supervision 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 a person to whom they apply, or
 - (e) an alleged breach, by a person who falls within paragraph (c), (d), (e) or (f) of section 84(2), of one or more of the rules of the relevant regulatory body,
- but not if it relates to a person who is excluded from the application of subsection (1) of section 84 by subsection (6) of that section.

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- (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.
- 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;
 - (b) in the case of a person certified by the Commissioner as exempt under section 84(4)(a), withdraw his exemption; or
 - (c) in the case of a person falling within paragraph (c), (d), (e) or (f) of section 84(2), refer the matter to the relevant regulatory body.

Power to enter premises

- 7
- (1) This paragraph applies if—
 - (a) the Commissioner is investigating a complaint under the complaints scheme;
 - (b) the complaint falls within paragraph 5(3)(a), (b) or (d); and
 - (c) there are reasonable grounds for believing that particular premises are being used in connection with the provision of immigration advice or immigration services by a registered person.
 - (2) The Commissioner, or a member of his staff authorised in writing by him, may enter the premises at reasonable hours.
 - (3) Sub-paragraph (2) does not apply to premises to the extent to which they constitute a private residence.
 - (4) A person exercising the power given by sub-paragraph (2) (“the investigating officer”) may—
 - (a) take with him such equipment as appears to him to be necessary;
 - (b) require any person on the premises—
 - (i) to produce any document which he considers relates to any matter relevant to the investigation; and
 - (ii) if the document is produced, to provide an explanation of it;
 - (c) require any person to state, to the best of his knowledge and belief, where any such document is to be found;
 - (d) take copies of, or extracts from, any document which is produced;

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- (e) require any information which is held in a computer and is accessible from the premises and which the investigating officer considers relates to any matter relevant to the investigation, to be produced in a form—
 - (i) in which it can be taken away; and
 - (ii) in which it is visible and legible.
- (5) Instead of exercising the power under sub-paragraph (2), the Commissioner may require such person as he may determine (“his agent”) to make a report on the provision of immigration advice or immigration services from the premises.
- (6) If the Commissioner so determines, his agent may exercise the power conferred by sub-paragraph (2) as if he were a member of the Commissioner’s staff appropriately authorised.
- (7) If a registered person fails without reasonable excuse to allow access under sub-paragraph (2) or (6) to any premises under his occupation or control, the Commissioner may cancel his 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 on him 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 his from obstructing any person exercising such functions.

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—
 - (a) if the person to whom the complaint relates is a registered person or a person employed by, or working under the supervision of, a registered person, record the complaint and the decision on it for consideration when that registered person next applies for his registration to be continued;
 - (b) if the person to whom the complaint relates is a registered person or a person employed by, or working under the supervision of, a registered person and the Commissioner considers the matter sufficiently serious to require immediate action, require that registered person to apply for continued registration without delay;
 - (c) if the person to whom the complaint relates falls within paragraph (c), (d), (e) or (f) of section 84(2), refer the complaint and his decision on it to the relevant regulatory body;
 - (d) if the person to whom the complaint relates is certified by the Commissioner as exempt under section 84(4)(a) or is employed by, or working under the

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- supervision of, such a person, consider whether to withdraw that person's exemption;
- (e) lay before the Tribunal a disciplinary charge against a relevant person.
- (2) Sub-paragraph (3) applies if—
- (a) the 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 Tribunal may give directions (which are to have effect while it is dealing with the charge)—
- (a) imposing such restrictions in connection with the provision—
- (i) by the relevant person, or
- (ii) by any person employed by him or working under his supervision, of immigration advice or immigration services as the directions may specify; or
- (b) prohibiting him, or any person employed by him or working under his supervision, from providing immigration advice or immigration services.
- (4) “Relevant person” means a person providing immigration advice or immigration services who 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;
- (d) a person working under the supervision of a member or employee of such a body;
- (e) a person certified by the Commissioner as exempt under section 84(4)(a);
- (f) a person to whom section 84(4)(d) applies; or
- (g) a person employed by, or working under the supervision of, a person to whom paragraph (e) or (f) applies.

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.

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- (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).