

# IMMIGRATION AND ASYLUM ACT 1999

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *Schedule 5, Part I: Regulatory functions of the Immigration Services Commissioner*

260. [Paragraph 1](#) of Schedule 5 provides the Commissioner with the power, after consultation, to make rules with regard to the professional practice, conduct and discipline of registered advisers and their employees or those supervised by them in connection with the provision of immigration advice or services. Paragraph 2 requires the Commissioner to make and alter these rules in writing. Paragraph 3 requires the Commissioner to prepare and issue a code of standards for certain persons providing immigration advice or immigration services, other than the members of designated bodies. Paragraph 4 allows the Secretary of State to extend the code to members of designated professional bodies subject to consultation with the Immigration Services Commissioner, the Legal Services Ombudsman or territorial equivalents and subject to the approval of the Lord Chancellor or the Scottish Ministers.
261. [Paragraph 5](#) requires the Commissioner to set out a scheme for the investigation of complaints and paragraph 6 requires the complaint scheme to allow those subject to investigation reasonable opportunity to make representations. It also requires those persons to assist the Commissioner in his investigation. Those who fail to comply may have their registration cancelled, exemption withdrawn or be referred to the relevant regulatory body.
262. [Paragraph 7](#) provides the Commissioner or an authorised member of his staff with the power to enter premises (but without using force) and to take copies of any document or information held on computer which the investigating officer considers relates to the investigation of a relevant complaint against a registered person. It also permits cancellation of registration where access by the Commissioner or his staff is denied or where he is obstructed in carrying out an investigation.
263. [Paragraph 8](#) requires the Commissioner to give a written statement on determining a complaint under the complaints scheme. Paragraph 9 sets out the options available to the Commissioner on determining a complaint. These include recording a complaint for consideration when a registered person next applies for continued registration or a requirement for a registered person to apply for continued registration without delay. If the person is authorised by a designated professional body (including EEA bodies) or working under the supervision of such a person, the Commissioner may refer the complaint to the relevant regulatory body. If a person is exempted by the Commissioner (or is employed by, or working under the supervision of such a person), then the Commissioner may consider whether to withdraw exemption.
264. [Paragraph 10](#) enables the Commissioner, when referring a complaint to a designated professional body, to set a timetable for the investigation of the complaint and, if appropriate, the taking of disciplinary proceedings. The Commissioner is required to take into account the failure by the designated body (whether in part or whole) to comply with directions in deciding to make a report under section 86 as to the failure of self

*These notes refer to the Immigration and Asylum Act 1999  
(c.33) which received Royal Assent on 11 November 1999*

regulation of the body concerned; and the Secretary of State must take it into account in deciding whether to withdraw the designation of the professional body under that section.