

Regulatory Impact Assessment

1. TITLE OF PROPOSAL / PROPOSED REGULATION

**THE ASYLUM AND IMMIGRATION (TREATMENT OF CLAIMANTS ETC) BILL
Improving the effectiveness of the work of the Office of the Immigration
Services Commission (OISC).**

2. PURPOSE AND INTENDED EFFECT OF MEASURE

(i) The objective

The Government's aim in setting up the OISC was to root out unscrupulous immigration advisers and promote good practice among immigration advisors. This was to be achieved through a regulatory scheme which would improve the standard of immigration advice and by establishing a complaints mechanism.

The Commissioner's Annual Report to the Secretary of State for 2002 -3 suggested there was scope for improving the effectiveness of the scheme. This Regulatory Impact Assessment (RIA) outlines measures intended to improve the effectiveness of the regulatory scheme; they were developed following dialogue with the Commissioner.

(ii) The background:

The OISC was established by Part V of the Immigration and Asylum Act 1999; they became fully operational in April 2001. Since 1 May 2001 it has been unlawful for anyone in the United Kingdom to provide immigration advice, in the course of a business unless they are qualified under the terms of Part V of the 1999 Act. Those registered with or exempted by the OISC, together with solicitors, barristers or legal executives regulated by their own designated professional body (DPB) or European equivalent, or who those have otherwise been exempted are so qualified.

The OISC's tasks include:

- regulating immigration advisers in accordance with the Commissioner's Rules and Code of Standards
- receiving and handling complaints about immigration advisers
- maintaining and publishing the register and list of advisers
- processing applications for registration or exemption from immigration advisers.

The OISC is an independent non-departmental public body (NDPB) headed by the Immigration Services Commissioner. The Commissioner's general duty is to promote good practice in the giving of immigration advice. He must seek to ensure that those who provide immigration advice or services are fit and competent to do so, that they act in the best interests of their clients, that they do not mislead any court, tribunal or adjudicator and do not seek to abuse immigration or asylum procedures or advise another to do so.

Immigration advisers who are acting for profit and who are not otherwise qualified must apply to register with the Commissioner; a fee is paid with the application. Those acting not for profit (e.g. charities, voluntary groups etc) must apply for an exemption certificate from the Commissioner. The initial registration application fee varies from £1,750 (1-4

advisers) to £2,500 (10+ advisers). Fees for continued registration applications vary from £1,250 (1-4 advisers) to £2,050 (10+ advisers). The registration period is normally twelve months.

(iii) Risk assessment

Any immigration advisor who has not come forward for regulation by the OISC and should have done is committing a criminal offence under s.91 of the Immigration and Asylum Act 1999. The consequences of the activities of unregulated immigration advisers are that the advice provided is of unknown quality/value and there is a real possibility that their clients are being exploited. These proposals are intended to drive such cowboys out of business and to improve the Commissioner's ability to investigate complaints. The outcome will be better standards of immigration advice and better consumer protection.

By definition, it is impossible to put an exact figure on the number of advisers flouting the regulatory scheme, but the Commissioner estimates that there are around 1000, of which, perhaps half advertise their services in one way or another.

Furthermore, the Commissioner has a statutory duty to report to the Secretary of State his opinion as to how effective each DPB's is in regulating its members regarding their provision of immigration advice. The Commissioner cannot provide a comprehensive opinion without the necessary information from the DPBs. The Commissioner's most recent Annual Report makes it clear that he was limited in providing a comprehensive opinion to the Secretary of State because of a lack of co-operation by certain DPBs.

The Commissioner has very limited powers to investigate those who are flouting the regulatory scheme and thereby committing a criminal offence and we need to remedy this if the regulatory scheme is to remain credible. The new powers to enter the premises of unregulated advisers will make it far easier for the Commissioner to gather necessary evidence for a criminal prosecution.

3. OPTIONS

(1) Do nothing.

(2) Improve effectiveness of OISC

The proposals that effect business, charities or the voluntary sector are:

- (1) a new criminal offence of advertising or seeking to provide immigration advice when unqualified to do so
- (2) the placing of a duty on designated professional bodies (DPBs) to provide information to the Commissioner so that he can properly fulfil his statutory functions to report to the Secretary of State regarding the effectiveness of each DPB's regulation of its members.
- (3) a power to enter premises (domestic or business) where the Commissioner has reasonable grounds for suspecting that immigration advice or services are being provided illegally (i.e. in contravention of s.91 of the Immigration and Asylum Act).

(4) the abolition of an appeal right to the Immigration Services Tribunal (IST) in cases where the Commissioner leaves a minor complaint against an immigration adviser on file. Were the Commissioner to refuse an application for continued registration from such an adviser, a right of appeal will remain.

4. BENEFITS

Do nothing

There will be no change to present regime therefore no benefits and the Commissioner would continue to be unable to enforce the regulatory scheme fully effectively.

Improve effectiveness of OISC

The benefits of being able to take firmer action against those who are breaking the law will mean improvements to the effectiveness and credibility of the regulatory scheme administered by the OISC. This will, in turn, benefit those who seek immigration advice.

This package of measures will mean, (a) more prosecutions of criminals (b) greater assurance that immigration advice available in the United Kingdom is professional; (c) a reduced likelihood of the vulnerable being taken for a ride; (d) better complaint investigation; (e) more business for legitimate businesses; (f) and greater consumer protection.

5. COSTS

Do nothing

There are no additional compliance costs for businesses, charities or voluntary organisations associated with this option, as the current system would be retained.

Improve effectiveness of OISC

The Commissioner will target his additional powers on those complaint investigations where he believes serious harm is being done to clients. The assumption is that the number of prosecutions and warrants sought is based on present ability of the OISC to carry such duties.

The OISC annual report for 2002/03 says that: "To date, we have registered 172 organisations and exempted 969... but we cannot rest content with this, given that we know from our work to date that there are a substantial number of advisers still to be brought into the scheme."

Other assumptions are that any entry into premises, of a person illegally providing immigration services or advice, with a warrant would be a cost to business and that:

the average length of time spent after entry at a business would be three hours. papers etc were taken away there would be disruption to an unregulated adviser who was also carrying out a legitimate business such as a travel agent which could involve the business being unable to trade for a period. Thus there might be a major cost to a small business from this disruption. Disruption of the business should be kept to a minimum as it would relate to the papers and equipment pertaining to the investigation.

- The anticipated number of entry warrants is expected to be up to 20 per year of these the number of warrants issued where a legitimate business is also being carried out is not expected more than 5 per year.

Proposal	Cost to Business etc
2 (1) A new criminal offence of advertising when unregulated	The expected number of summary prosecutions is 12. The businesses prosecuted would be providing advice when they should already have applied for regulation by the OISC. The estimated cost to business is minimal
2 (2) Duty on designated professional bodies to co-operate with, and provide timely information to, the Commissioner	It is anticipated that most bodies have the necessary information ready to hand. Requests from the Commissioner would need to be reasonable. This is unlikely to effect the normal course of business and the costs incurred would be likely to be small. The estimated cost to business is minimal
2 (3) Power to enter premises where it is suspected that immigration advice is being given illegally and to search for and seize material which can be used as evidence in a criminal prosecution under s.91 of the 1999 Act.	The number of entry warrants is estimated at up to 20 per year of which 5 might be required for entry to premises where legitimate business is also being carried out. We would anticipate the cost to business would be no more than £0.1m per year
2 (4) Abolition of an appeal right to the Immigration Services Tribunal for registered advisers regarding minor complaints left on file.	Cost neutral.
Total estimated cost to business	Not exceeding £0.1m

6. CONSULTATION WITH SMALL BUSINESS: THE SMALL FIRMS IMPACT TEST

The Small Business Service has been consulted on this RIA, it has concerns that the consultation process did not allow for the minimum 12-weeks to engage on the detail of the proposals with relevant small business stakeholders. This prevents proper estimation of all the impacts that there maybe from the measure.

7. COMPETITION ASSESSMENT

The proposals will impact on the market for the provision of immigration advice. The only element of the proposals likely to create costs for business is the entering of the premises and subsequent criminal charges. This will affect only a relatively small number of businesses i.e. those subject of a complaint and costs for businesses affected will be low. Given the absence of concentration in the market and the fact that proposals will not affect market structure or entry it is not expected that the proposals will have a significant effect on competition.

8. ENFORCEMENT AND SANCTIONS

These measures are aimed at those flouting the regulatory scheme and will enable the OISC to take better enforcement action.

9. MONITORING AND REVIEW

The OISC publish an annual report which is presented to Parliament.

10. CONSULTATION

A consultation letter about the Asylum Reform proposals was sent to relevant bodies on 27 October asking for responses by 17 November. The OISC proposals were identified in that letter.

11. SUMMARY AND RECOMMENDATION

Option 2 is the recommended Option, as it will help to improve effectiveness of OISC. The estimated cost of the option to business, charities and the voluntary sector is £0.1m.

12. DECLARATION

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed

Date

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