

This document sets out what assistance individuals and organisations may provide to those people who have queries regarding their immigration position or need advice and assistance with an immigration matter. It also explains what work falls for regulation by the Office of the Immigration Services Commissioner (OISC) or another legal services regulator such as the Solicitors Regulation Authority, Bar Standards Board, CILEx Regulation or equivalent bodies operating in Scotland or Northern Ireland.

The Immigration and Asylum Act 1999 as amended (the 1999 Act), sets out the work that can only be provided by a person who is regulated to do so. To provide immigration advice and services when not regulated is a criminal offence so it is important for individuals and organisations who wish to assist migrants and those with immigration and settlement matters, to understand what they can and cannot do.

Once you have read this document if you are still unsure whether the work you wish to do requires regulation, you can e-mail the OISC at [VSS@OISC.GOV.UK](mailto:VSS@OISC.GOV.UK) setting out the work you would like to carry out.

## What is Immigration Advice?

The 1999 Act defines 'immigration advice' in section 82. It is described as advice relating to a **particular individual** given in connection with one or more '**relevant matters**'.

### **Providing advice to a particular individual**

In order to give advice to an individual it is necessary to have an understanding of the individual's specific circumstances. Organisations which publish, display or present **general** information about immigration policy and procedures, but do not relate this to **individual** cases, are not providing immigration advice which requires regulation.

Publishing general information that might be applicable to many people is not considered immigration advice that requires regulation. People are giving '**advice**' to someone if they provide an **opinion** on a course of action or a range of options a person might take based on the information they have provided.

## Relevant Matters

*A Polish community support group has produced an information booklet regarding the new EU Settlement Scheme. It is providing this free to those who ask questions about their status following the UK's exit from the EU.*

The support group do not need to be regulated by the OISC in order to produce or distribute this general information booklet.

*Anna contacts the support group to ask if she can meet with someone regarding her immigration status as she is a non-EEA national and her marriage to her Polish husband has broken down. Anna is concerned about what this means for her current immigration status and her future status after the UK's exit from the EU.*

In order to advise Anna the support group would need to be registered with the OISC and the individual providing advice would need to be authorised, having received relevant training and passed the appropriate OISC assessment.

The 1999 Act provides us with a list of relevant matters. They include:

- Asylum claims
- All immigration applications and any conditions associated with immigration status
- Nationality Law (i.e. how to become a British Citizen)
- EU Citizenship and rights of entry and residence
- Unlawful entry to the UK
- Removal and deportation from the UK
- Immigration Bail (i.e. the basis on which an asylum seeker or an irregular migrant can be released)
- Any appeal or judicial review connected to any of the above

*Heinrich is from Hamburg. He has been living in the UK for the past 5 years and is a self-employed IT consultant. He is concerned about his right to remain after the UK exits the EU particularly as he travels a lot and is worried about how his time out of the UK might affect his leave. He has made an appointment to speak to his accountant about the EU Settlement Scheme as he believes he may need a full set of accounts to show his continuity of work and business activity over the last 5 years.*

Heinrich's accountant can prepare a full set of his accounts for him - the preparation of business accounts is not a relevant matter. In preparing them she is acting entirely on Heinrich's brief and is not concerned with the purpose for which the documents will be used.

*Heinrich's accountant has however read about the scheme herself and believes that Heinrich may not require the detailed accounts he is requesting.*

Heinrich's accountant can, without the need to be regulated, mention to Heinrich that he may want to check if a full set of accounts are indeed required. She should advise him to get professional advice from a regulated adviser if he thinks his periods of leave outside the UK may be a problem. She cannot complete the application for him or advise on whether his documents or position meets the requirements unless she is registered with the OISC.

## What is an Immigration Service?

A person is providing a 'service' if they take any action on behalf of an individual in order to pursue or represent their matter, for example with the UK immigration authorities such as, UK Visa and Immigration (UKVI or the Immigration Tribunals).

### **Providing services to a particular individual**

*A voluntary organisation which provides support to detainees and their families has offered to assist a client to try to locate documents that were left at their accommodation when they were detained. The client needs these documents to support an application for release from detention.*

The organisation does not need to be registered with the OISC to help locate these documents for the client.

*When the documents are located the client asks if the voluntary organisation can use the documents to make an application for them to be released from detention. The documents clearly show that the person has valid leave and so no further representations should be needed.*

The organisation would need to be registered with the OISC to submit these documents to the Secretary of State as part of a bail application. The organisation can however, with the client's permission, forward the documents to the client in detention or to a legal adviser or another person without needing to be registered with the OISC.

The 1999 Act also states that the provision of immigration advice and services requires regulation where it is provided:

- (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).

### **Advice and/or services provided by a person in the United Kingdom**

Only immigration advice and/ or services provided by an organisation or individual in the UK falls to be regulated under the 1999 Act.

An organisation based in the UK which advises persons in relation to a 'relevant matter' who are overseas, needs to be regulated to provide immigration advice and services. Similarly a firm based overseas which travels to meet clients in the UK or has a representative who meets clients in the UK and provides immigration advice/services would need to be regulated.

*Wang Shu is studying engineering at a university in Belfast. Her student visa is due to expire in a few months and she would like some advice on how to stay in Northern Ireland to work. She has spotted a firm on the internet that offers advice to students about immigration matters, they are based in Dublin so she could easily go to see them if need be.*

As the immigration advice firm is based in the Irish Republic it does not need to be registered with the OISC in order to advise Wang Shu. However if a legal representative from the firm were to meet Wang Shu in Northern Ireland they would then be committing a criminal offence if they provide immigration advice and/or services to her there.

Wang Shu would need to be careful as any advice and/or services provided to her online or in the Irish Republic would not be subject to any regulatory checks on fitness or competence by the OISC. Wang Shu might also check if the university can advise her as it may be able to help and does not need to be registered with the OISC to provide immigration advice and/or services. See the section below on Ministerial Exemptions.

### **Advice and/or services provided in the course of a business**

Immigration advice and/or services provided by profit-making organisations will always be considered as giving advice in the course of a business. Further, the immigration advice and/or service do not need to be provided by a business that is exclusively an immigration business.

Immigration advice and/or services provided by charitable organisations is also providing advice in the course of a business. It is irrelevant if the organisation only provides advice to its members or does not charge for its advice or services. Such groups if giving advice or services to individuals related to a relevant matter would need to be regulated to do so.

Occasional immigration advice and/or services given to immediate family members and close friends does not require regulation and of course no fee can be charged for this work. Those who begin to give advice more widely or frequently will need to be regulated.

*Nira would like her mother to visit her from India and stay with her in the UK for a few months. Nira has a friend, Varun, at the local temple who she has known for a long time and advised her neighbour on a similar application many years ago. She e-mails him to ask if he can advise her.*

Varun does not need to be registered with the OISC to advise Nira about her mother's visit and he can help her complete the application if need be. He must be acting as a friend and not her legal representative and cannot charge her for this service. He should not advise her at all if he is unsure of the process and he must not begin to advise other people at the temple on an ongoing basis, to do so would risk committing a criminal offence. He must explain to Nira that he is not a qualified adviser or regulated to give advice and explain that he is giving advice purely as a friend. Nira should consider carefully whether she should follow Varun's advice or speak to a regulated adviser.

*Despite making clear that he is not a legal adviser (he already has a full time job) Varun finds more and more people seem to be contacting him for help. He is extremely interested in immigration law and would like to help the local community if he could but he is concerned about breaking the law.*

Varun may want to speak to the temple about whether they would like him to offer free advice officially for the temples devotees. Varun may need some formal training but the temple can if they wish, apply for registration with the OISC as an organisation with Varun put forward as an applicant adviser. Equally, Varun can look to set up his own community organisation and apply for registration with the OISC. In either case Varun must not provide immigration advice and services until his registration has been approved.

### **Second-tier advice**

**Second-tier advice** is advice given normally by one advice service to another. If you only provide second-tier advice you do not require registration as you are not advising a client on their immigration matter.

*A refugee support organisation offers a general advice line for community voluntary organisations that have queries about the asylum process and procedure.*

The refugee support organisation does not need to be registered with the OISC to give general advice through their advice line to community voluntary organisations.

*Zola is a national of the Democratic Republic of Congo. He has seen the advice line number in a leaflet about local community support services and calls as he would like some legal advice and representation to make an asylum claim.*

The refugee support organisation would need to be registered with the OISC in order to act as Zola's legal representative in making an asylum application or to advise him on the merits of his case. The organisation can, however, explain to Zola how the asylum process generally works and look to signpost him to a regulated adviser without need to be registered itself.

### **Advice on access to public services**

Advice or assistance on accessing any services such as welfare benefits, medical services, housing or education assistance, which might be affected by the person's immigration status, but does not of itself affect that status, do not fall for regulation under the 1999 Act.

*Mariam is an Iranian national and currently has an asylum application pending with the Home Office. She has been very unwell but is not sure if she can register to see a doctor and is afraid of doing anything that might jeopardise her application. She therefore approaches her local church welfare group for advice.*

The church group can advise Mariam regarding accessing medical services without the need to be registered with the Commissioner.

*Mariam's application for Asylum is successful and she is granted Refugee Status. She returns to the church group to ask if they will help her to secure a rental property by writing a letter to her prospective landlord about her entitlement to live in the UK*

The church group can write a factual letter for Mariam explaining that she has Refugee Status and what this means in relation to her right to live and work in the UK.

### **Advice related to criminal proceedings**

Advice given in connection with representing an individual before a court in criminal proceedings or matters ancillary to criminal proceedings also falls outside of the scope of OISC regulation.

*A college law clinic assisted by local solicitors has begun to offer a drop-in centre where local residents can get free initial advice on legal matters from students. They are approached by a young Dutch man who is living and working in the UK. He has been issued with a summons related to a failure to insure his car. He wants to know what action he should take regarding the summons; but he is also concerned that the action may affect his right to stay and work in the UK.*

Unless registered with the OISC, students at the law clinic cannot advise him in relation to the effect of the summons on his immigration status. However, they are free to advise him in relation to the criminal matter and may want to signpost him to a registered adviser in relation to his immigration position.

## Signposting and non-technical assistance

Where it is identified that a person needs professional immigration advice and/or services in order to take their immigration matter forward, simply 'signposting' that person to an authorised adviser is not an activity that is regulated by the Commissioner.

Also, if someone has an ongoing immigration matter that is being dealt with by an authorised adviser and a person is supporting the individual in dealing with the legal representative - perhaps by translating documents for them, taking them to their meetings with their legal representative or helping them to understand the information their legal representative has requested, then that person does not need to be regulated to provide this kind of assistance.

*Lorena has been a member of a Brazilian expat group in London since she moved to the UK with her Portuguese husband two years ago. She has recently separated from her husband and has been concerned about her status since the UK referendum to leave the EU. She has instructed a legal representative who has advised her that she must apply for a resident's card immediately and he has asked her to collect certain documents from her husband. Lorena finds the adviser difficult to talk to, her English is not great and she struggles to understand the legal language the adviser uses. She approaches the expat group for advice.*

While not registered to provide immigration advice and/or services the expat group can help Lorena by translating letters from the legal adviser and explaining what the adviser is asking her to do. They can support her in getting together the documents she needs and translating them if need be or visiting the adviser with Lorena.

*The expat group is concerned about the advice that Lorena has been given. They are not sure that she must get a resident's card now and feel she is being pushed into making this application.*

If the group are concerned that Lorena may not be getting good immigration advice and/or a good service, they can encourage her to make a complaint to the OISC or they can make one on her behalf and the Commissioner will review the matter. They can also signpost Lorena to another regulated immigration adviser.

## Form filing and technical assistance

Where individuals are submitting their own applications to UKVI and a person is solely translating the forms or guidance document, or is helping the individual to understand how to follow the instructions provided by UKVI for the submission of their documents, the person assisting the applicant does not need to be registered with the OISC.

*Kostadin is applying for settlement under the EU Settlement Scheme. He has read the guidance documents and feels confident that he will easily meet the requirements - he has been living and working in the UK for years. He is, however, not sure how to actually make the application using the new app, because he has an Apple iPhone which he has read will not work for these applications. He may therefore need to access an android phone and get some help with the digital aspect of this application.*

Any digital assistance with the application does not require the person to be registered with the OISC as long as Kostadin is still making the application himself.

*Kostadin is able to get assistance through his local library with accessing an android phone to upload his application. In completing the application it occurs to him that he has some parking fines and he is not sure whether something like this needs to be declared. He asks the librarian who is assisting him for some advice.*

The library staff can direct Kostadin to look at the Home Office guidance information which explains what needs to be declared in relation to criminality and declarations, but they cannot advise on whether he should declare the fines on his application. If Kostadin remains unsure, the library staff can help him to find a regulated immigration adviser who may be able to advise him.



## Employers and Educational Bodies

Employers and certain education bodies may provide advice to their employees and their students without the need to be regulated by the OISC if they meet the requirements of the Ministerial Exemptions. Further details can be found in the section below which sets out **the three** Ministerial Exemptions that apply to the 1999 Act.

Employers and educational bodies may themselves sometimes seek advice from organisations as to whether the employees they may wish to recruit or students they wish to offer places to, are restricted in any way by their immigration status.

Those organisations that offer guidance to employers or educational bodies in general terms (for example regarding the immigration rules around workers or students) would not require regulation.

Those organisations also do not need to be regulated if they are engaged to administer the employer or educational body's Certificate of Sponsorship (COS) allocation, or undertake compliance checks on the its staff.

However, should that organisation advise on a particular client matter, or provide a service by acting as the legal representative for an employee or student pursuing an application with the Home Office, this work would need to be regulated.

*A consortium of small businesses that employ a large number of agricultural workers is considering hiring a organisation to give them general advice about the migrant workers' right to work in the UK.*

The organisation does not need to be registered with the Commissioner to advise the employers about the general leave conditions attached to the workers' immigration status.

The organisation would, however, need to be registered to advise the individual workers in relation to any further applications for leave or making an application under the EU Settlement Scheme.

They would also need to be registered if they wished to make applications on behalf of the employers to extend the leave granted to their employees and assign an individual COS or Confirmation of acceptance for Studies to support a Further Leave to Remain application.

It should be noted that employers can themselves; both advise their employees about their immigration matters and make an application on their behalf without the need to be registered with the Commissioner, if they offer this and other advice free of charge. See section below on Ministerial Exemptions.

## Ministerial Exemptions

The Secretary of State currently provides three exemptions (through Statutory Instruments) from the requirement to be regulated by the OISC. This means that organisations operating in line with the exemptions can provide immigration advice and services without needing to be regulated by the Commissioner. The exemptions are:

- **Statutory Instrument 2009 No 506** – This order exempts Licensed Sponsors from the need to be regulated by the Commissioner where they are providing immigration advice and services to migrants (and their dependent families who are pursuing dependent or independent applications) who they are sponsoring under Tier 2 or Tier 4 of the Points Based System. The advice must be related to this particular application and must be provided free of charge by the licensed sponsor.
- **Statutory Instrument 2001 No. 1403** – This order exempts specific Educational Institutions, together with their respective student unions, along with Health Sector Bodies from the need to be regulated by the OISC to provide immigration advice and services to its employees.
- **Statutory Instrument 2003 No 3214** – This order exempts employers from the need to be regulated where providing immigration advice and services to an employee or prospective employee and their immediate family members as long as the advice and services are provided free of charge and the employee is someone who requires permission to work or is an EU National, or the family member of an EU National.

The exempted persons or entities listed above are however still required to comply with the Commissioner's Code of Standards.

October 2018