



Asylum and Immigration (Treatment of Claimants, etc.) Act 2004

2004 CHAPTER 19

Immigration services

37 Provision of immigration services

(1) For section 84(2) and (3) of the Immigration and Asylum Act 1999 (c. 33) (person qualified to provide immigration services) substitute—

“(2) A person is a qualified person if he is—

- (a) a registered person,
- (b) authorised by a designated professional body to practise as a member of the profession whose members the body regulates,
- (c) the equivalent in an EEA State of—
 - (i) a registered person, or
 - (ii) a person within paragraph (b),
- (d) a person permitted, by virtue of exemption from a prohibition, to provide in an EEA State advice or services equivalent to immigration advice or services, or
- (e) acting on behalf of, and under the supervision of, a person within any of paragraphs (a) to (d) (whether or not under a contract of employment).

(3) Subsection (2)(a) and (e) are subject to any limitation on the effect of a person’s registration imposed under paragraph 2(2) of Schedule 6.”

(2) In section 85(1) of that Act (registration by the Commissioner) omit “and (b)”.

(3) In section 89 of that Act (disciplinary charge upheld by Immigration Services Tribunal)—

- (a) for subsections (2) and (3) substitute—

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- “(2) If the person charged is a registered person or acts on behalf of a registered person, the Tribunal may—
- (a) direct the Commissioner to record the charge and the Tribunal’s decision for consideration in connection with the registered person’s next application for continued registration;
 - (b) direct the registered person to apply for continued registration as soon as is reasonably practicable.”, and
- (b) in subsection (8) for “employed by him or working” substitute “acting on his behalf or”.
- (4) In section 90(4) of that Act (orders by disciplinary bodies) for “works under the supervision of” substitute “is acting on behalf of”.
- (5) In Schedule 5 to that Act (Immigration Services Commissioner)—
- (a) for paragraph 1(1)(b) substitute—
 - “(b) those acting on behalf of registered persons.”,
 - (b) for paragraph 1(3)(b) substitute—
 - “(b) any person acting on behalf of that person.”,
 - (c) for paragraph 3(3)(b) substitute—
 - “(b) a person who is acting on behalf of a person who is within paragraph (a).”,
 - (d) for paragraph 4(1)(b) substitute—
 - “(b) persons acting on behalf of persons who are within paragraph (a).”,
 - (e) in paragraph 5(3)(b) for “employed by, or working under the supervision of,” substitute “acting on behalf of”,
 - (f) for paragraph 5(3)(e) substitute—
 - “(e) an alleged breach of a rule of a relevant regulatory body.”,
 - (g) for paragraph 6(3)(c) substitute—
 - “(c) in any other case, refer the matter to any relevant regulatory body.”,
 - (h) in paragraphs 9(1)(a) and (b) for “or a person employed by, or working under the supervision of,” substitute “or is acting on behalf of”,
 - (i) for paragraph 9(1)(c) substitute—
 - “(c) refer the complaint and his decision on it to a relevant regulatory body.”,
 - (j) for paragraphs 9(3)(a) and (b) substitute—
 - (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;
 - (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.”, and
 - (k) for paragraphs 9(4)(b) to (d) substitute—
 - “(b) a person acting on behalf of a registered person.”.
- (6) In Schedule 6 to that Act (registration)—
- (a) in paragraph 1(1) omit “or (b)”, and

- (b) in paragraph 3(7)(a) for “section 89(3)(b)” substitute “section 89(2)(b)”.

38 Immigration Services Commissioner: power of entry

- (1) After section 92 of the Immigration and Asylum Act 1999 (c. 33) (offences: enforcement) insert—

“92A Investigation of offence: power of entry

- (1) On an application made by the Commissioner a justice of the peace may issue a warrant authorising the Commissioner to enter and search premises.
- (2) A justice of the peace may issue a warrant in respect of premises only if satisfied that there are reasonable grounds for believing that—
- (a) an offence under section 91 has been committed,
 - (b) there is material on the premises which is likely to be of substantial value (whether by itself or together with other material) to the investigation of the offence, and
 - (c) any of the conditions specified in subsection (3) is satisfied.
- (3) Those conditions are—
- (a) that it is not practicable to communicate with a person entitled to grant entry to the premises,
 - (b) that it is not practicable to communicate with a person entitled to grant access to the evidence,
 - (c) that entry to the premises will be prevented unless a warrant is produced, and
 - (d) that the purpose of a search may be frustrated or seriously prejudiced unless the Commissioner can secure immediate entry on arrival at the premises.
- (4) The Commissioner may seize and retain anything for which a search is authorised under this section.
- (5) A person commits an offence if without reasonable excuse he obstructs the Commissioner in the exercise of a power by virtue of this section.
- (6) A person guilty of an offence under subsection (5) shall be liable on summary conviction to—
- (a) imprisonment for a term not exceeding six months,
 - (b) a fine not exceeding level 5 on the standard scale, or
 - (c) both.
- (7) In this section—
- (a) a reference to the Commissioner includes a reference to a member of his staff authorised in writing by him,
 - (b) a reference to premises includes a reference to premises used wholly or partly as a dwelling, and
 - (c) a reference to material—
 - (i) includes material subject to legal privilege within the meaning of the Police and Criminal Evidence Act 1984 (c. 60),

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- (ii) does not include excluded material or special procedure material within the meaning of that Act, and
 - (iii) includes material whether or not it would be admissible in evidence at a trial.
- (8) In the application of this section to Scotland—
- (a) a reference to a justice of the peace shall be taken as a reference to the sheriff,
 - (b) for sub-paragraph (i) of subsection (7)(c) there is substituted—
 - “(i) includes material comprising items subject to legal privilege (as defined by section 412 of the Proceeds of Crime Act 2002 (c. 29)),”
 - and
 - (c) sub-paragraph (ii) of subsection (7)(c) shall be ignored.
- (9) In the application of this section to Northern Ireland the reference to the Police and Criminal Evidence Act 1984 shall be taken as a reference to the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)).”
- (2) In paragraph 7 of Schedule 5 to the Immigration and Asylum Act 1999 (c. 33) (investigation of complaints, &c.: power of entry)—
- (a) in sub-paragraph (1)(b) after “(b)” insert “, (c)”,
 - (b) in sub-paragraph (1)(c) for “registered person.” substitute “registered or exempt person.”,
 - (c) in sub-paragraph (1A)(a) after “(b)” insert “, (c)”,
 - (d) in sub-paragraph (1A)(b) for “registered person.” substitute “registered or exempt person.”, and
 - (e) after sub-paragraph (8) insert—
 - “(9) Sub-paragraphs (7) and (8) shall apply to an exempt person as they apply to a registered person, but with a reference to cancellation of registration being treated as a reference to withdrawal of exemption.
- (10) In this paragraph “exempt person” means a person certified by the Commissioner as exempt under section 84(4)(a).”

39 Offence of advertising services

After section 92A of the Immigration and Asylum Act 1999 (c. 33) (inserted by section 38 above) insert—

“92B Advertising

- (1) A person commits an offence if—
 - (a) he offers to provide immigration advice or immigration services, and
 - (b) provision by him of the advice or services would constitute an offence under section 91.
- (2) For the purpose of subsection (1) a person offers to provide advice or services if he—
 - (a) makes an offer to a particular person or class of person,

- (b) makes arrangements for an advertisement in which he offers to provide advice or services, or
 - (c) makes arrangements for an advertisement in which he is described or presented as competent to provide advice or services.
- (3) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (4) Subsections (3) to (7) of section 91 shall have effect for the purposes of this section as they have effect for the purposes of that section.
- (5) An information relating to an offence under this section may in England and Wales be tried by a magistrates' court if—
 - (a) it is laid within the period of six months beginning with the date (or first date) on which the offence is alleged to have been committed, or
 - (b) it is laid—
 - (i) within the period of two years beginning with that date, and
 - (ii) within the period of six months beginning with a date certified by the Immigration Services Commissioner as the date on which the commission of the offence came to his notice.
- (6) In Scotland, proceedings for an offence under this section may be commenced—
 - (a) at any time within the period of six months beginning with the date (or first date) on which the offence is alleged to have been committed, or
 - (b) at any time within both—
 - (i) the period of two years beginning with that date, and
 - (ii) the period of six months beginning with a date specified, in a certificate signed by or on behalf of the procurator fiscal, as the date on which evidence sufficient in his opinion to warrant such proceedings came to his knowledge,and any such certificate purporting to be so signed shall be deemed so signed unless the contrary is proved and be conclusive as to the facts stated in it.
- (7) Subsection (3) of section 136 of the Criminal Procedure (Scotland) Act 1995 (c. 46) (date on which proceedings are deemed commenced) has effect to the purposes of subsection (6) as it has effect for the purposes of that section.
- (8) A complaint charging the commission of an offence under this section may in Northern Ireland be heard and determined by a magistrates' court if—
 - (a) it is made within the period of six months beginning with the date (or first date) on which the offence is alleged to have been committed, or
 - (b) it is made—
 - (i) within the period of two years beginning with that date, and
 - (ii) within the period of six months beginning with a date certified by the Immigration Services Commissioner as the date on which the commission of the offence came to his notice.”

40 Appeal to Immigration Services Tribunal

Section 87(3)(f) of the Immigration and Asylum Act 1999 (c. 33) (appeal to Tribunal against deferral of decision) shall cease to have effect.

41 Professional bodies

(1) Section 86 of the Immigration and Asylum Act 1999 (designated professional bodies) shall be amended as follows.

(2) For subsection (2) substitute—

“(2) The Secretary of State may by order remove a body from the list in subsection (1) if he considers that the body—

- (a) has failed to provide effective regulation of its members in their provision of immigration advice or immigration services, or
- (b) has failed to comply with a request of the Commissioner for the provision of information (whether general or in relation to a particular case or matter).”

(3) For subsection (9)(b) substitute—

“(b) report to the Secretary of State if the Commissioner considers that a designated professional body—

- (i) is failing to provide effective regulation of its members in their provision of immigration advice or immigration services, or
- (ii) has failed to comply with a request of the Commissioner for the provision of information (whether general or in relation to a particular case or matter).”

(4) After subsection (9) insert—

“(9A) A designated professional body shall comply with a request of the Commissioner for the provision of information (whether general or in relation to a specified case or matter).”

(5) In section 166(2) of the Immigration and Asylum Act 1999 (c. 33) (regulations and orders) after “in relation to” insert “orders made under section 90(1).”

(6) For paragraph 21(2) of Schedule 5 to the Immigration and Asylum Act 1999 (Commissioner: annual report) substitute—

“(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.”