

ASYLUM AND IMMIGRATION (TREATMENT OF CLAIMANTS, ETC.) ACT 2004

EXPLANATORY NOTES

IMMIGRATION SERVICES

Section 37: Provision of immigration services

Section 37 amends the categories of advisers qualified to provide immigration advice or services under section 84 of the Immigration and Asylum Act 1999 and makes consequential amendments.

171. Subsection (1) amends section 84(2) and (3) of the 1999 Act. The effect of the amendment is to require that unqualified advisers, who wish to be qualified by virtue of their association with a qualified adviser, must be acting on behalf of, and under the supervision of that qualified adviser, which is a change from the existing provision, which allows them to either be employed by or supervised by that qualified adviser.
172. Subsection (4) amends section 90(4) of the 1999 Act. The effect is to define those advisers subject to the jurisdiction of a disciplinary body as those authorised by the relevant designated professional body and those acting on behalf of and supervised by an authorised person.

Section 38: Immigration Services Commissioner: power of entry

173. **Section 38(1)** inserts a new section 92A in the Immigration and Asylum Act 1999. It gives the Commissioner a power, subject to obtaining a warrant, to enter and search premises (including a dwelling) where there are reasonable grounds for suspecting that there is material likely to be of substantial value to the investigation of the offence under section 91 of the 1999 Act of providing immigration services or advice when unqualified to do so. The list of those qualified to provide immigration advice is set out in section 84 of the 1999 Act.
174. Subsection (1) enables a justice of the peace to issue a warrant authorising the Commissioner to enter and search premises.
175. Subsection (2) provides that warrants can only be issued if there are reasonable grounds for believing that an offence under section 91 is being committed and that there is material on the premises which is of substantial value to the investigation of the offence.
176. Subsection (3) sets out other conditions. Any one of those conditions must be satisfied before a warrant can be issued. Those conditions are: where it is impracticable to communicate with a person entitled to grant entry or access to the premises; where entry to the premises will be prevented unless a warrant is produced; where the purpose of the search may be seriously prejudiced unless immediate entry on arrival at the premises is secured.
177. Subsection (4) enables the Commissioner to retain material he has seized.

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178. Subsection (5) makes it an offence for anyone to obstruct the Commissioner in exercising the warrant.
179. Subsection (6) sets the penalty for obstructing the Commissioner, following a summary conviction, as imprisonment for up to six months or a fine not exceeding level 5 on the standard scale, or both.
180. Subsection (7) clarifies the following references in the section. A reference to the Commissioner includes a reference to a member of his staff authorised in writing by him. A reference to premises includes a reference to premises used wholly or partly as a dwelling. A reference to material includes material subject to legal privilege, and material which would not be admissible as evidence at a trial.
181. Subsections (8) and (9) set out how the provisions of the new section 92A are to be applied in Scotland and Northern Ireland.
182. [Section 38\(2\)](#) amends paragraph 7 of Schedule 5 to the Immigration and Asylum Act 1999. The effect is to extend the Commissioner's power to enter premises and require the provision of documents and information. The existing power applies to advisers registered under the regulatory scheme. Section 38(2) extends the application of the power to include advisers certified as exempt by the Commissioner, under section 84(4) (a) of the 1999 Act.

Section 39: Offence of advertising Services

183. [Section 39](#) inserts a new section 92B in the Immigration and Asylum Act 1999.
184. Subsection (1) creates a new criminal offence of advertising or offering to provide immigration advice or services when unqualified. Those qualified to provide immigration advice are listed in section 84 of the 1999 Act.
185. Subsection (2) sets out the behaviour that would constitute advertising or offering to provide immigration advice or services.
186. Subsection (3) establishes the maximum penalty for the offence which will be a Level 4 fine (£2,500).
187. Subsection (4) applies subsections (3) to (7) of section 91 of the 1999 Act so that if the new offence is committed by a body corporate, an officer (including partners in Scotland) of that body will be culpable.
188. Subsection (5) enables the Commissioner to lay an information before a magistrate within six months of the date of the alleged advertising offence having been committed, or within two years of that date and within six months of the offence coming to the attention of the Commissioner. Subsections (6), (7) and (8) provide for the same limits to apply in Scotland and Northern Ireland.

Section 40: Appeal to Immigration Services Tribunal

189. [Section 40](#) provides that section 87(3)(f) of the Immigration and Asylum Act 1999 shall cease to have effect.
190. Section 87(2) of the 1999 Act provides a right of appeal to the Immigration Services Tribunal against a relevant decision of the Immigration Services Commissioner; section 87(3) lists the relevant decisions. The relevant decision in section 87(3)(f) is one recorded under paragraph 9(1)(a) of Schedule 5 of the 1999 Act. Paragraph 9(1) (a) of Schedule 5 provides that on determining a complaint against a registered adviser, an employee, or someone being supervised by a registered adviser, the Commissioner may record the complaint and the decision on it for consideration when that registered person next applies for his registration to be continued.

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191. The effect of this section, therefore, is to remove the right of appeal to the Tribunal where the Commissioner has recorded a complaint on file for consideration when an application for continued registration is received from the immigration adviser concerned. If the Commissioner were to refuse that application for continued registration from such an adviser, a right of appeal would remain by virtue of sections 87(3)(d) of the 1999 Act.

Section 41: Professional Bodies

192. **Section 41** amends section 86 of the Immigration and Asylum Act 1999 and paragraph 21 of Schedule 5 to that Act.
193. Subsection (2) inserts a new subsection (2) in section 86. The effect of new subsection (2)(b) is to extend the Secretary of State's existing power to make an order removing the name of a designated professional body from those listed in section 86 of the 1999 Act so that he make such an order if he considers a designated professional body has failed to comply with a request from the Commissioner for information.
194. Subsection (3) substitutes a new subsection (9)(b) in section 86. The effect of new subsection (9)(b)(ii) is to extend the Commissioner's existing responsibility when reporting to the Secretary of State about a designated professional body, to include a duty to report where the body has failed to comply with an information request from him.
195. Subsection (4) inserts a new subsection (9A) in section 86. The effect is to place an obligation on all designated professional bodies to comply with requests from the Commissioner for information.
196. Subsection (5) amends section 166(2) of the 1999 Act. It ensures that the definition of an "order" in that section does apply to an order under section 90(1) of that Act, which therefore need not be made by statutory instrument.
197. Subsection (6) substitutes a new paragraph 21(2) in Schedule 5 to the 1999 Act. The effect of new sub-paragraph 21(2)(b) is to extend the Commissioner's existing responsibility, when making his Annual Report to the Secretary of State, so as to include a duty to report on failures on the part of designated professional bodies to comply with requests by him for information.