

IMMIGRATION ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5: Oversight

Office of the Immigration Services Commissioner

Section 63: Immigration advisers and immigration service providers

363. This section provides that Schedule 7 has effect.

Schedule 7: Immigration advisers and immigration service providers

364. *Paragraph 1* explains that this Schedule makes amendments to Part 5 of the 1999 Act, which provides for the regulation of immigration advisers and immigration services providers, including, in particular, the establishment of the Immigration Services Commissioner (“the Commissioner”).

365. *Paragraph 2* concerns the Commissioner’s power to exempt immigration advisers from registration.

366. *Paragraphs 2(1) and 2(2)* have the effect of removing the Commissioner’s general power to exempt immigration advisers and service providers from the requirement to be registered and the consequential requirement to pay a fee to the Commissioner. The Commissioner currently uses this power to exempt advisers that do not charge for their services.

367. *Paragraph 3* concerns the waiver of fees for registration. It amends paragraph 5 of Schedule 6 to the 1999 Act to provide a new power for the Secretary of State to require or authorise the Commissioner to waive all or part of a registration fee in particular cases. The Government plans to use this power to require the Commissioner to waive the registration fee in relation to advisers who do not charge for their services.

368. *Paragraph 4* introduces a new duty on the Commissioner to cancel registration in certain circumstances (see paragraph 4(4)).

369. *Paragraph 4(1)* provides that where such cancellation is on the grounds that an adviser is no longer competent or is otherwise unfit, such a decision is appealable to the Tribunal under section 87(3) of the 1999 Act.

370. *Paragraph 4(2)* provides that the Commissioner’s powers to determine complaints under paragraph 9(1)(a) of Schedule 5 to the 1999 Act are subject to the new duty to cancel the registration of a person the Commissioner considers to be no longer competent or otherwise unfit.

371. *Paragraph 4(3)* makes some changes to the Commissioner’s power under paragraph 3 of Schedule 6 to the 1999 Act (to require registered advisers to apply for their registration to be continued) that are consequential on the new cancellation power.

*These notes refer to the Immigration Act 2014 (c.22)
which received Royal Assent on 14 May 2014*

372. *Paragraph 4(4)* inserts a new paragraph 4A into Schedule 6 to the 1999 Act. This requires the Commissioner to cancel a person's registration in the following circumstances: where the person asks for their registration to be cancelled; where the person concerned dies; where the organisation concerned is dissolved or wound up; where the person is convicted of certain immigration offences where The Tribunal directs the Commissioner to cancel a person's registration; and where the Commissioner considers that the person is no longer competent or is otherwise unfit to provide immigration advice and services.
373. *Paragraph 5* concerns the suspension of registration in certain circumstances.
374. *Paragraphs 5(1) and (2)* make changes to sections 84(3) and 87(4) of the 1999 Act that are consequential on paragraph 5(3) below.
375. *Paragraph 5(3)* inserts a new paragraph 4B into Schedule 6 to the 1999 Act. This provides that the Tribunal may, on an application made to it by the Commissioner, suspend a person's registration where the person is charged with the following: an offence involving dishonesty or deception; an indictable offence; or certain immigration offences. Under the new paragraph, the suspension will have effect until one of the following has occurred: the person is acquitted, the charge is withdrawn, the proceedings are discontinued or an order is made for the charge to lie on the file. Where the person is convicted, the suspension will continue to have effect until the Commissioner has cancelled the person's registration (in the cases where she is required so to do so) or decided whether or not to cancel it (where she needs to exercise judgement about whether they competent or fit). Persons suspended will, for the period of their suspension, not be treated as registered persons for the purposes of section 84 of the 1999 Act. The new paragraph also requires the Commissioner to record the suspension in the Commissioner's register of advisers and organisations and remove such records where applicable.
376. *Paragraph 6* inserts a new paragraph 4A after paragraph 4 of Schedule 5 of the 1999 Act. The purpose of this is to put beyond doubt that the Commissioner's powers include inspection of the activities of and business of registered persons.
377. *Paragraph 7(1)* amends section 89(2) of the 1999 Act to provide that the Tribunal may uphold a charge laid against an adviser who was registered at the time of an alleged breach of the code of practice or rules, but whose registration has since been cancelled.
378. *Paragraphs 7(2) to (5)* make amendments to paragraphs 5(3) and 9 of Schedule 5 of the 1999 Act to provide that the Commissioner may investigate and determine complaints against an organisation that was registered at the time of an alleged breach of the code of practice or rules, but whose registration has since been cancelled.
379. *Paragraph 8* concerns the Commissioner's powers of entry.
380. *Paragraph 8(1)* omits the current paragraph 7 of Schedule 5 to the 1999 Act which sets out the existing power of entry in relation to complaints.
381. *Paragraph 8(2)* inserts a new paragraph 10A into that Schedule. This paragraph provides a modified framework for the Commissioner's power of entry in relation to non-criminal matters. The modifications are as follows: firstly, the power may only be given effect if the Commissioner obtains a warrant from a magistrate or, in Scotland, a sheriff. Secondly, the magistrate or sheriff may grant the warrant in relation to the exercise of any of the Commissioner's functions, not just the investigation of complaints. This means that it can be used for inspection purposes. Thirdly, a warrant may be granted in relation to private residences where they are being used or have been used to provide immigration advice or services. Fourthly, the power may be used to investigate complaints against an organisation that has had its registration cancelled. Fifthly, the sanction available to the Commissioner in relation to a person who fails without reasonable excuse to allow access to the premises is the cancellation of the

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person's registration. In other respects, the Commissioner's power of entry will remain substantially the same.