

REPRESENTATIVES (REGULATION OF)

IMPORTANT NOTE: Any reference in the following guidance to “immigration” may also be read as a reference to “nationality”

1. General

1.1 The **Immigration and Asylum Act 1999** introduced a scheme to regulate those who provide advice on nationality, immigration, asylum and related matters, or who provide services - such as filling in application forms on behalf of clients or making representations to IND on their behalf - in connection with such matters.

1.2 The Act provides for an Immigration Services Commissioner to administer the scheme, and for an Immigration Services Tribunal to hear and determine appeals against certain of the Commissioner's decisions.

1.3 Under the scheme, the provision of immigration advice or services is prohibited unless a person is:

- registered with the Immigration Services Commissioner; **or**
- authorised to practice by a designated body (including, among others, the Law Society and Bar Council); **or**
- exempt under the terms of the scheme; **or**
- a Crown servant acting in his or her official capacity

1.4 There are two aspects to exemption. A person could be exempted directly by the Commissioner or be exempted by virtue of a Ministerial Order)

2. Complaints about unscrupulous and incompetent representatives

2.1 IND may forward to the Immigration Services Commissioner, for investigation and possible prosecution, complaints relating to:

- the incompetence or fitness of a person to provide immigration advice or services; **and/or**
- a breach of the Commissioner's Rules (see paragraph 2.2.1 below); **and/or**
- a breach of the Commissioner's Code of Standards (see paragraph 2.2.2 below); **and/or**
- a breach of one or more of the rules of the relevant professional body (e.g. a breach by a solicitor of the Law Society's Rules)

2.2 Breaches of the Commissioner's Rules and the Code of Standards

2.2.1 A representative may be in breach of the Commissioner's Rules if, for example, he or she fails to:

- provide the client with written confirmation that he/she is registered with the Commissioner, and display details at the business premises; **or**
- charge a reasonable fee and explain how the fee is calculated; **or**
- keep clear written records of advice given, work done and transactions made on behalf of each client and keep audited, certified or otherwise verified business accounts; **or**
- have in place a complaints procedure, which must be explained to the clients; **or**

- allow the Commissioner access to the premises to investigate any complaints about the adviser's competence

2.2.2 A representative may be in breach of the Code of Standards if, for example, he or she:

- misleads the immigration authorities, courts, tribunal or adjudicator or abuses immigration, appellate or judicial procedures; **or**
- advises or acts for a client **either** beyond the scope of his/her skills, knowledge and competencies and is, therefore, unable to meet the client's needs **or** beyond the level at which he/she is registered or exempted to do so; **or**
- fails to act objectively and fairly in respect of the client; **or**
- fails to provide confirmation of authorisation to provide advice when requested to do so by IND and IAA officials; **or**
- fails to keep clients regularly informed of the progress of their case and its outcome; **or**
- fails to have in place procedures to ensure a competent service for clients (i.e. keeps accurate records and case files)

3. For more detailed guidance about the Regulation scheme and how to make a complaint or pass on information about a representative to the Immigration Services Commissioner, see **Chapter 1 Section 17** of the Immigration Directorate Instructions.