

Regulating Immigration Advice The New Scheme

This briefing contains vital information for every organisation that may at any point give advice touching on immigration issues.

From 30th April 2001 organisations and advisers not complying with the new scheme will be committing a criminal offence.

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1. Introduction

- 1.1 Providers of immigration advice or services in the UK are subject to a new regulatory scheme, established by Part V of the Immigration and Asylum Act 1999. The scheme is administered by the Office of the Immigration Services Commissioner (OISC). The Immigration Services Commissioner is John Scampion.
- 1.2 This briefing provides an overview of the scheme. Section 2 describes who is covered by the scheme and section 3 outlines what **not-for-profit (nfp) providers** need to do now. The briefing uses the term **provider** to mean both individual advisers and organisations employing such advisers.
- 1.3 From 30th April 2001 it will be a **criminal offence** to provide immigration advice or services unless the provider is:
 - registered with the OISC; **or**
 - authorised to practise by a designated professional body (or an equivalent European Economic Area regulatory body); **or**
 - exempt from the requirement to register with the OISC.
- 1.4 The above categories of provider are considered in more detail in section 4 below. Note however that providers who are exempt from the requirement to register are **not** exempt from the regulatory scheme as a whole or from having to comply with the Act. Most of the scheme still applies to exempt providers - see paragraph 1.10 below.
- 1.5 A person providing immigration advice or services when prohibited by the Act from so doing is liable to a fine and/or imprisonment for up to two years.
- 1.6 Nfp providers must obtain an exemption by **30th April 2001** if they wish to continue to provide immigration advice and services from that date (unless they are members of a designated professional body - see section 4 below, but note that the position of Law Centres and other solicitor organisations is as yet unconfirmed).
- 1.7 Nfp providers in England and Wales can obtain a **temporary exemption** by making a formal commitment to apply for the Community Legal Service (CLS) Quality Mark. This commitment must be made to the Legal Services Commission (LSC), which administers the CLS, no later than 30th April 2001. Further details of how to obtain a temporary exemption are set out in section 8 below. The relevant application form is contained at the end of this briefing.
- 1.8 Providers who are not temporarily exempted under the above arrangement must obtain an **individual exemption** from the OISC. For the purposes of this briefing the term "individual exemption" means an exemption granted by the Commissioner under the procedures described in section 9 below. Note that the procedures for **Citizens Advice Bureaux (CABx)** are somewhat different than for other nfp organisations - see paragraph 9.4 below.
- 1.9 Nfp providers in the **education** sector will be covered by a **block exemption**, and will **not** therefore need to apply for a temporary or individual exemption. This is considered in more detail in section 4 below.
- 1.10 There are four elements to the scheme:
 - the Commissioner's Rules - these apply to registered providers only;
 - the Code of Standards - this applies to registered and exempt providers;
 - the Guidance to Advisers: Competences - this applies to registered and exempt providers;

- the Complaints Scheme - this applies to all providers, including members of designated professional bodies.

These elements are considered in more detail in sections 5, 6, 7 and 10 below.

- 1.11 Documents relating to the scheme can be obtained from the OISC, and are also available on its website. The OISC is based at:

6th Floor
Fleetbank House
2-6 Salisbury Square
London EC4Y 8JX

Telephone: 020 7211 1500
Fax: 020 7211 1553
Website: www.oisc.gov.uk

- 1.12 This briefing has been written primarily for nfp providers. The contents have been agreed with the OISC and the LSC.
- 1.13 This briefing is not a substitute for reading the relevant OISC documentation in full nor does it constitute legal advice. All managers and advisers involved in the delivery of immigration advice or services should have an understanding of the new scheme and how it affects their service.

2. Who is covered by the scheme

- 2.1 The new regulatory scheme applies to anyone who provides any immigration advice or services, except for someone acting in their capacity as:

- an office holder under the Crown (or otherwise exercising functions on the Crown's behalf); or
- an employee of a government department (or otherwise acting under the control of a government department).

- 2.2 The scheme applies to providers in the UK regardless of the location of the client.

Definition of immigration advice and services

- 2.3 **Immigration advice** is defined as advice which:

- relates to a particular individual;
- is given in connection with one or more relevant matters;
- is given by a person who knows that he or she is giving it in relation to a particular individual and in connection with one or more relevant matters; and
- is not given in connection with representing an individual before a court in criminal proceedings or matters ancillary to criminal proceedings.

- 2.4 **Immigration services** are defined as the making of representations on behalf of a particular individual in connection with one or more relevant matters:

- in civil proceedings before a court, tribunal or adjudicator in the United Kingdom; or
- in correspondence with a Minister of the Crown or government department.

- 2.5 For the purposes of paragraphs 2.3 and 2.4 above, **relevant matters** are as follows:
- a claim for asylum;
 - an application for, or for the variation of, entry clearance or leave to enter or remain in the United Kingdom;
 - unlawful entry into the United Kingdom;
 - nationality and citizenship under the law of the United Kingdom;
 - citizenship of the European Union;
 - admission to Member States under Community law;
 - residence in a Member State in accordance with rights conferred by or under Community law;
 - removal or deportation from the United Kingdom;
 - an application for bail under the Immigration Acts or under the Special Immigration Appeals Commission Act 1997;
 - an appeal against, or an application for judicial review in relation to, any decision taken in connection with a matter referred to above.
- 2.6 The provision of **information only**, meaning information on immigration matters not related to the particular circumstances of an individual (for example describing the law in general terms, giving a client a leaflet or referring a client to another provider) is **not** covered by the scheme.
- 2.7 Organisations should consider very carefully whether they are providing information only or advice. Information becomes advice as soon as it becomes tailored to the particular circumstances of an individual enquirer as opposed to being a general description of the law applying to the population or groups within the population. If such advice is on a relevant matter as defined in 2.5 above, the provider of the advice will fall within the scheme.

Not-for-profit providers and the new scheme

- 2.8 The scheme applies where the provider is providing immigration advice or services "in the course of a business (whether or not for profit)". **All** nfp organisations and advisers providing immigration advice or services as defined in paragraphs 2.3 - 2.5 above are covered by the scheme, including:
- Law Centres and advice services providing specialist immigration advice;
 - advice services providing generalist immigration advice, including where this is ancillary to advice on other issues, such as welfare rights or housing;
 - organisations providing immigration advice as a secondary function of their main service, for example providing counselling or hostel accommodation;
 - community and self-help organisations providing immigration advice.
- 2.9 The scheme applies both to individual advisers providing immigration advice or services and to organisations employing such advisers. It applies to both paid and volunteer advisers.
- 2.10 The scheme does not apply to immigration advice or services not being provided in the course of a business, for example advising a friend or family member.

3. What not-for-profit providers need to do now

- 3.1 Nfp providers should familiarise themselves with the new scheme and consider carefully whether and how it applies to their service. In particular, providers should consider whether they need to apply for an exemption. If the position is unclear, the organisation should immediately seek further advice (see section 11 below for more details).

3.2 All staff should be informed about:

- the scheme and how it applies to the organisation's service;
- the organisation's position concerning exemption;
- the importance of continuing compliance with the scheme;
- any procedures (for example, enquiry/case allocation, supervision and monitoring) put in place to ensure compliance and to avoid anyone inadvertently acting outside of the scheme.

3.3 Providers requiring an exemption should consider whether they are likely to obtain it by 30th April 2001. If they are not able to meet this deadline, they should make arrangements to refer ongoing and new immigration enquiries/cases to other providers who are able to comply with the scheme.

3.4 Providers may resume providing immigration advice or services at any point in the future by obtaining an exemption from the OISC. The OISC recognises that some providers may not be able to meet the 30th April deadline. It is very keen that such providers are not discouraged from making a later application. Organisations facing difficulties in meeting the deadline may contact the OISC to discuss their situation.

3.5 Keeping clear enquiry/case records is important in documenting advice given to clients. This will provide supporting evidence if there is any doubt about whether a provider is acting within the scheme. Records should be checked by a supervisor or other competent adviser to ensure compliance with the scheme.

4. Categories of provider

4.1 The scheme distinguishes between three categories of provider: registered providers, members of designated professional bodies and exempt providers. These are considered below.

Registered providers

4.2 All immigration providers are required to register with the OISC unless they are authorised by a designated professional body or exempt. In practice, the registration scheme is aimed at non-legally qualified advisers providing services for a profit. Nfp providers who are not members of a designated professional body are expected to seek exemption from registration.

4.3 Registered providers must comply with the Commissioner's Rules, the Code of Standards and the Guidance to Advisers. They are also covered by the Complaints Scheme.

Members of designated professional bodies

4.4 Persons who are authorised to practise by a designated professional body or who work under the supervision of such an authorised person do **not** need to register with the OISC or seek exemption from registration. They need not comply with the Commissioner's Rules, the Code of Standards or the Guidance to Advisers (although they may as a matter of good practice wish to take account of the Code and Guidance). They are covered by the Complaints Scheme.

4.5 The term "authorised to practise by a designated professional body" includes persons who are not immigration specialists but work mainly in another area of law. Members of a designated professional body must however comply with the rules and regulations of that body, including those concerning the supervision of legal work.

Under the Complaints Scheme (see section 10 below), the Commissioner may make a referral to a designated professional body, which may result in that body taking disciplinary action against a member provider.

4.6 The Act specifies the following organisations as being designated professional bodies:

- The General Council of the Bar;
- The Law Society;
- The Institute of Legal Executives;
- The Faculty of Advocates;
- The Law Society of Scotland;
- The General Council of the Bar of Northern Ireland;
- The Law Society of Northern Ireland.

4.7 It is generally considered that Law Centres and other nfp organisations employing practising solicitors constitute solicitors' practices/offices and as such are regulated by the Law Society in the country concerned. Accordingly, Law Centres and similar organisations may be viewed as members of a designated professional body for the purposes of the Act, and do not need to register or seek exemption from registration. This view is presently taken by the Home Office (which is the sponsoring government department for the scheme), the LSC, the Law Centres Federation and ASA. However, at the time of writing, it has not been confirmed by the OISC or the Law Society (England and Wales). Law Centres and other nfp organisations employing practising solicitors may therefore wish to contact their professional body, advice network and/or the OISC for further advice on this issue.

4.8 Practising solicitors volunteering in an nfp organisation, for example by participating in a legal advice rota scheme, do not personally need to obtain an exemption. The organisation concerned must however apply for an exemption if other advisers provide immigration advice or services (unless it is a solicitor agency as defined in paragraph 4.7 above).

4.9 Practising barristers/advocates employed by or volunteering in an nfp organisation do not personally need to obtain an exemption. The organisation concerned must however apply for an exemption if other advisers provide immigration advice or services (unless it is a solicitor agency as defined in paragraph 4.7 above).

4.10 The Act also allows authorised advisers from other EEA states to provide services in the UK without having to register or obtain an exemption. This includes advisers authorised by bodies in other EEA states with a similar function to the OISC or by bodies responsible for regulating the legal profession in such states.

Exempt providers

4.11 Nfp providers who are not members of designated professional bodies must obtain an exemption if they wish to continue to provide advice and immigration services from 30th April 2001. Providers will be committing a criminal offence if they provide such services from that date without having obtained an exemption.

4.12 Nfp providers are **not** automatically exempted from the requirement to register, but must normally apply for an exemption (but see paragraphs 4.15 and 9.4 below). Exempt providers are not covered by the Commissioner's Rules, but they **must** comply with the Code of Standards and Guidance to Advisers. They are covered by the Complaints Scheme. These elements of the scheme apply to **all** exempt providers, whatever the route by which they have obtained their exemption.

4.13 There are two types of exemption:

- exemptions granted by the Commissioner to individual providers (referred to in this briefing as "individual exemptions");
- exemptions granted by the Secretary of State to particular categories of provider (referred to in this briefing as "block exemptions").

4.14 The Secretary of State has granted a **temporary block exemption** for nfp providers who have obtained or made a formal commitment to apply for the CLS Quality Mark. This commitment must be made to the LSC by 30th April 2001 (see section 8 below for details of how to do this). Providers who are not temporarily exempt must obtain an **individual exemption**. The procedures for applying for an individual exemption, including arrangements for CABx, are described in section 9 below.

4.15 The Secretary of State intends to grant a **block exemption** covering providers in the **education** sector. Such providers will not therefore need to apply for a temporary or individual exemption, but will of course have to comply with the scheme. The details of the block exemption have not yet been announced, but it is likely that advice services provided through universities, colleges of further education and student unions will be covered. It is not yet known whether the exemption will cover all levels of service set out in the Code of Standards (see paragraph 6.3 below).

5. The Commissioner's Rules

5.1 The Commissioner's Rules apply only to registered providers. In practice, this means for-profit providers who are not members of a designated professional body. Nfp organisations having contact with the clients of such providers may find it useful to have a copy of the Rules.

5.2 The Rules set out a range of requirements, including those related to fee charging structures, publicity, professional indemnity insurance, financial management and complaints handling.

6. The Code of Standards

6.1 The Code of Standards applies to both registered and exempt providers. It distinguishes between different **levels of service** and comprises three sections:

- section 1 covers organisational standards;
- section 2 covers the behaviour of individual advisers;
- section 3 covers the competence of individual advisers.

6.2 The Code of Standards has been partially matched to the CLS Quality Mark, firstly to maintain a degree of consistency between the two schemes and secondly, to reduce duplication of effort by providers in meeting the requirements of the schemes. In practice, nfp providers in England and Wales obtaining the Quality Mark will be partially passported for the purposes of the OISC scheme. They must however meet additional OISC requirements (relating to behaviour and competence) which are not covered in the Quality Mark. This is considered in more detail in section 9 below.

Levels of service

- 6.3 The levels of service in the Code broadly correspond to the different CLS Quality Mark levels of service, as follows:

OISC Level	CLS Quality Mark Level
Level 0 - Signposting and Information (comparative only – see 6.4 below)	Self Help/Assisted Information
Level 1 – General	General Help
Level 2 - General Casework	General Help with Casework
Level 3 – Specialist	Specialist Help

- 6.4 Note that providers operating at Level 0 (equivalent to the Self Help/Assisted Information Quality Mark levels) are not covered by the scheme (see paragraphs 2.6 and 2.7 above) and do not have to register with the OISC or apply for an exemption. Information on Level 0 is included in the Code for purely comparative purposes.
- 6.5 The organisational standards and adviser competences differ according to the level of service at which the organisation wishes to operate. The standards relating to the behaviour of advisers are the same for all levels of service.
- 6.6 It is essential to note that providers are **prohibited** from undertaking work that is regarded as being above the level at which they have been registered or exempted. In deciding the appropriate levels of service to be covered in their application for exemption, nfp providers will need to consider both:

- the level of organisational standards which the organisation can meet;
- the level(s) of competence which individual advisers can meet.

This is considered in more detail in sections 7 and 9 below.

Organisational standards

- 6.7 The standards set out in section 1 of the Code have been organised into broadly the same areas as the CLS Quality Mark. The detailed requirements vary according to the level of service being provided.
- 6.8 The standards are as follows:

- (a) **Access to service** - this covers informing clients about such issues as:
- the type of service provided (including the status of the service under the scheme);
 - the work to be undertake on the client's behalf;
 - details of any costs;
 - who in the organisation is dealing with the case (Levels 2 and 3 only);
 - how to make a complaint (Levels 2 and 3 only);
 - the progress and outcome of a case (Levels 2 and 3 only).
- (b) **Seamless service** - this covers:
- when it is appropriate to refer clients to alternative providers;
 - withdrawing from a case.

- (c) **Running the organisation** - this covers management policies, procedures and structures, including:
- how the service is organised;
 - key objectives and forward planning;
 - financial control and accounts;
 - staff recruitment, training, management, supervision and appraisal;
 - referral procedures;
 - client satisfaction;
 - anti-discrimination;
 - client confidentiality;
 - professional indemnity insurance;
 - complaints handling.
- (d) **People management** - this covers:
- management and supervision of advice/casework;
 - casework allocation related to the ability of advisers;
 - supervisor standards;
 - case reviews.
- (e) **Running the service** - this covers:
- enquiry/case records;
 - case management;
 - accessibility of records to clients and the OISC;
 - clients' documents;
 - publicity.
- (f) **Meeting clients' needs** - this covers:
- confidentiality;
 - conflict of interest;
 - the use of interpreters;
 - equality of service.

Behaviour standards

6.9 The standards in section 2 of the Code apply to individual advisers at whatever level of service they are operating. They cover:

- (a) Acting in the **best interest of the client**.
- (b) Appropriate **behaviour**, including:
- respect for the client and the legal system and following due processes of law;
 - acting objectively and fairly with respect to the client;
 - demonstrating on request that the adviser is authorised to provide advice or services under the scheme;
 - not knowingly misleading immigration or other legal authorities;
 - not abusing immigration and asylum procedures.

(c) **Client care**, including:

- recognising that as a result of illness or trauma, some clients may be unable to provide a full account of events relating to their case;
- helping such clients to obtain appropriate assistance, including obtaining necessary reports;
- ensuring that clients receive a full explanation of their position and any proposed course of action, using an interpreter if necessary;
- advisers not abusing their position in respect of clients.

Competence standards

6.10 Section 3 of the Code sets out general competence standards for individual advisers, covering:

(a) **Competency** - this means ensuring that advisers:

- have the necessary skills, knowledge and competencies to meet the needs of their clients;
- do not advise or act beyond the scope of their competence;
- do not advise or act beyond the level at which they are registered or exempt.

(b) **Training and resources** - this means ensuring that advisers:

- have ready access to up-to-date information on immigration law;
- have the knowledge, competencies, resources and information relevant to their level of service, as set out in the Guidance to Advisers (see section 7 below);
- can demonstrate that they have acquired the relevant knowledge, competencies and resources and can keep them up-to-date;
- have a documented training plan related to the requirements set out in the Guidance to Advisers, which is regularly reviewed;
- where relevant, have an induction programme.

7. The Guidance to Advisers: Competences

7.1 The competence standards set out in the Code of Conduct are spelt out in more detail in the Guidance to Advisers. The Guidance will be reviewed and if necessary revised as the new scheme develops. Registered and exempt providers must follow the Guidance.

7.2 The Guidance specifies the following for each of the three levels of service covered by the scheme (Levels 1-3):

(a) **definition** of the level of service;

(b) **activities** which may be undertaken at each level (see paragraph 7.3 below), divided into the following six categories of work:

- asylum;
- applications for, or for variation of, entry clearance or leave to enter or remain;
- unlawful entry into, or stay in, the United Kingdom, refusal of leave to enter or remain in the United Kingdom and removal or deportation from the United Kingdom;
- nationality and citizenship under United Kingdom law;
- citizenship of the European Union, admission to, and residence, in member states under European Community law;

- an application for release from detention, ie temporary admission, adjudicator's bail, or Chief Immigration Officer's Bail;
- (c) the **knowledge** required by advisers at each level;
- (d) the **competencies** required by advisers at each level;
- (e) the **resources** required by advisers at each level.

7.3 The standards and requirements are more stringent for higher levels of service. In addition, providers may **only** undertake work at the level to which they have been registered or exempted. The Guidance specifies permitted activities for each level of service in the six categories described in paragraph 7.2 (b) above. This is illustrated in the following (very simplified) example, concerning asylum cases:

- Level 1 providers may only give basic one-off assistance on asylum and must refer clients to higher level providers for any ongoing casework;
- Level 2 providers may undertake casework in relation to asylum applications, but must not handle asylum appeals work, which may only be undertaken by Level 3 providers or members of a designated professional body.

7.4 When applying for an individual exemption, nfp providers will need to submit a Statement of Competence for each adviser providing immigration advice or services. This is considered in more detail in section 9 below.

8. Obtaining a temporary exemption

Who may obtain a temporary exemption

8.1 Any nfp provider in England and Wales who:

- has obtained the CLS Quality Mark; **or**
- has previously made a commitment to applying for the Quality Mark (ie submitted the appropriate form to the LSC by 31st October 2000); **or**
- makes a commitment by 30th April 2001 to obtaining the Quality Mark

will be **temporarily exempt** from the requirement to register with the OISC and may continue to provide immigration advice and services after 30th April 2001.

8.2 Providers with a temporary exemption should endeavour to operate according to the Code of Standards and Guidance to Advisers, and are subject to the Complaints Scheme. In practice however, the temporary exemption arrangement has been introduced in recognition of the fact that some nfp providers will need time to develop the systems and procedures necessary to ensure full compliance with OISC requirements.

8.3 Organisations which have obtained the CLS Quality Mark or have previously made a formal commitment to obtaining it need take no further immediate action at this stage.

8.4 The temporary exemption arrangement will cease to have effect on 31st January 2002. As of that date, providers covered by the arrangement must have obtained an individual exemption from the OISC - see section 9 for more details on this.

How to apply for a temporary exemption

8.5 Nfp providers in England and Wales who have not yet obtained or made a commitment to obtaining the CLS Quality Mark must submit a "Commitment to Make a Quality Mark Application" form to the LSC by **30th April 2001**.

8.6 The OISC has sent a "Commitment to Make a Quality Mark Application" form to nfp organisations identified as providing immigration advice or services. **The form is also attached to the end of this briefing.** The form comprises a simple declaration that the organisation intends to apply for the CLS Quality Mark by 31st October 2001. It should be completed by someone within the organisation who has the authority to make the declaration.

8.7 The form should be returned to:

Supplier Development Group
Legal Services Commission
85 Gray's Inn Road
London WC1X 8TX

Telephone: 020 7759 0000
Fax: 020 7759 0534
Website: www.legalservices.gov.uk

8.8 Nfp providers failing to obtain a temporary exemption by 30th April 2001 will as of that date be committing a criminal offence if they provide immigration advice or services unless:

- they have been granted an individual exemption by the OISC; or
- they are a member of a designated professional body; or
- they are covered by the proposed block exemption for providers in the education sector.

8.9 Providers may resume providing immigration advice or services (or begin to provide such advice or services for the first time) at any point in the future by obtaining an individual exemption from the OISC.

9. Obtaining an individual exemption

Who needs to apply for an individual exemption

9.1 All nfp providers need to obtain an **individual exemption** by **30th April 2001**, unless:

- they have obtained a temporary exemption (see section 8 above); or
- they are a member of a designated professional body; or
- they are covered by the proposed block exemption for providers in the education sector.

9.2 The temporary exemption arrangement described in section 8 lapses on 31st January 2002. Temporarily exempted providers wishing to extend their exemption beyond that date must apply to the OISC for an individual exemption by **31st October 2001**.

9.3 Providers applying for an individual exemption will need to demonstrate that they comply with the Code of Standards and the Guidance for Advisers. They must continue to comply in order to maintain their exemption.

CABx seeking a Level 1 exemption

9.4 CABx seeking a Level 1 exemption only do **not** have to apply individually to the OISC. The OISC has agreed that the National Association of Citizens Advice Bureaux (NACAB), the Northern Ireland Association of Citizens Advice Bureaux (NIACAB) and Citizens Advice Scotland (CAS) may each submit an application to obtain individual exemptions **on behalf of CABx** in the country concerned.

- 9.5 CABx should contact their national association to obtain further information about this arrangement. Note that CABx exempted under the arrangement will still need to comply with the Code of Standards and the Guidance to Advisers, and are covered by the Complaints Scheme.
- 9.6 The above arrangement applies to Level 1 only, and will cover both CABx and CAB advisers at that level. CABx wishing to be exempted at Levels 2 or 3 must apply for an individual exemption in accordance with the procedures described in paragraphs 9.8 - 9.17 below.

Standard procedure for applying for an individual exemption

- 9.7 The procedures set out in paragraphs 9.8 - 9.17 below apply to:
- all nfp providers except CABx wishing to be exempted at Level 1; and
 - all nfp providers including CABx wishing to be exempted at Levels 2 or 3.
- 9.8 Providers may apply for an individual exemption in one of two ways:
- by making a full application to the OISC;
 - by making a partial application to the OISC, together with an application for the CLS Quality Mark (this option only applies in England and Wales).
- 9.9 The organisational standards set out in the Code of Standards have been matched to CLS Quality Mark standards, and organisations obtaining the Quality Mark will be therefore be **partially passported** for the purposes of OISC scheme (see paragraph 9.14 below).
- 9.10 Organisations should start preparing to apply for an individual exemption as soon as possible, even if they have obtained a temporary exemption. Temporarily exempted providers seeking to be partially passported through the CLS Quality Mark will need to have submitted a Quality Mark application to the LSC by **31st October 2001**.
- 9.11 Providers need to obtain an OISC Registration/Exemption Pack. The OISC has sent the pack to organisations identified as providing immigration advice or services. Anyone who has not received one should contact the OISC as soon as possible. The packs are also available on the OISC website at www.oisc.gov.uk. The OISC pack is in five sections, as described below.
- 9.12 The main **application form** must be completed by all applicants.
- 9.13 **Workbook Section A** relates to the **Commissioner's Rules**, and must be completed by applicants seeking to register with the OISC (ie for-profit providers). Nfp providers seeking an exemption do not have to complete Section A.
- 9.14 **Workbook Section B** covers the **organisational standards** in the Code of Standards which have been matched to CLS Quality Mark standards. Applicants seeking an exemption do **not** have to complete Section B if one of the following applies:
- they have obtained the Quality Mark;
 - they have applied for the Quality Mark and submitted a copy of a completed Quality Mark Workbook to the OISC;
 - they have made a commitment to applying for the Quality Mark and are in a position to submit a copy of a completed Quality Mark Workbook to the OISC.

Other applicants must complete Section B.

- 9.15 **Workbook Section C** covers the **behaviour** standards in the Code of Standards. These are not matched to the CLS Quality Mark. All applicants must complete this Section.
- 9.16 The **Competence Statement** covers the **competence** standards in the Code of Standards and Guidance to Advisers. These are not matched to the CLS Quality Mark. All applicants must submit a Competence Statement for **each** adviser listed in the main application form, ie every adviser in the organisation who provides immigration advice or services covered by the scheme. The Competence Statement must be completed and signed by each individual adviser.
- 9.17 There is a separate Competence Statement for each level of service. The Statement refers to the six categories listed in paragraph 7.2 (b) above and seeks confirmation of the adviser's knowledge, competencies and resources, as set out in the Guidance to Advisers. It also contains a declaration, covering such matters as whether the adviser has:
- operated under a different name;
 - been disciplined or struck off by a designated professional body;
 - criminal convictions.

Levels of service and applications for exemption

- 9.18 Providers must **not** provide advice or services beyond the level at which they have been registered or exempted. This prohibition applies to both organisations and advisers. This means for example that an organisation exempted at Level 1 cannot provide a service at Level 2, even if it happens to employ an adviser who can meet the Level 2 competence standards. Similarly, if an adviser is exempted at Level 1, he or she is prohibited from providing immigration advice or services at Levels 2 or 3, even if the organisation is exempted at one of these levels.
- 9.19 Organisations should apply at the highest level at which they wish to be exempted, taking account of the organisation's capacity and its ability to meet the OISC's requirements. For example, if an organisation wishes to provide a service at the level of General Casework (Level 2), it must:
- **either** meet the organisational standards for Level 2 providers **or** obtain the CLS Quality Mark at the General Help with Casework level; and
 - ensure that advisers meet the behaviour standards; and
 - employ at least one adviser who meets the competence standards for Level 2.
- 9.20 Note that organisations seeking exemption via the CLS Quality Mark route must obtain the Quality Mark at the General Help level or above, as the Self-Help or Assisted Information levels cover organisations providing information only. They should apply for the Quality Mark level that corresponds to the highest level at which they wish to be exempted by the OISC.
- 9.21 Different advisers within an organisation may be exempted at different levels (but not at a level higher than that applying to the organisation). Thus an organisation exempted at Level 2 may for example employ two advisers exempted at Level 2 and three advisers exempted at Level 1.
- 9.22 Individual advisers may be exempted at different levels for the different categories specified in the Statement of Competence (as listed in paragraph 7.2 (b) above). An

adviser may for example be exempted at Level 2 in relation to asylum work and at Level 3 in relation to the other categories. In such a case, the adviser will need to complete two separate Competence Statements.

- 9.23 Managers and supervisors should assess the level of competence of each adviser in relation to each of the six categories.

After an application has been made

- 9.24 The OISC will undertake a desktop audit of the application. This means that an auditor will examine the documentation submitted by the provider and consider whether it meets the OISC's requirements. A decision on whether or not to grant an exemption is made on the basis of the desktop audit (and where appropriate through confirmation of the provider's CLS Quality Mark status).
- 9.25 OISC staff will provide advice to applicants where it is felt that there is a need to change any policies or procedures set out in the application, giving providers the chance to take corrective action after their application has been submitted.
- 9.26 The OISC may visit an applicant to carry out a full audit. However, the initial impetus for the scheme concerned the control of unscrupulous advisers working for a profit, and it is likely that in the immediate future the OISC will concentrate its resources on for-profit providers. Some nfp providers may be visited later this year, and all providers are likely to be visited at some point in the future.

10. The Complaints Scheme

Scope of the Scheme

- 10.1 The Complaints Scheme applies to **anyone** providing immigration advice or services (as defined in paragraphs 2.3 - 2.5 above), ie registered providers, exempt providers and members of designated professional bodies.
- 10.2 Leaflets to publicise the Complaints Scheme will be made available in different languages for distribution to advice providers, community groups, libraries etc.
- 10.3 The Scheme covers **relevant complaints**, which are defined as:
- the competence or fitness of a person to provide immigration advice or immigration services;
 - the competence or fitness of a person employed by, or working under the supervision of, a person providing immigration advice or immigration services
 - an alleged breach of either the Code of Standards or the Commissioner's Rules (where the Code or the Rules apply);
 - an alleged breach by someone regulated by a designated professional body (or equivalent EEA regulatory body) of the rules of that body.
- 10.4 The Scheme enables "any person or their representative or other interested parties" to make a relevant complaint to the Commissioner. This means that advice services and other organisations can have a role in identifying unscrupulous providers and bringing them to the attention of the Commissioner.
- 10.5 The Commissioner can instigate the complaints procedure on his own initiative where he identifies circumstances in which a complaint could have been made.

How the Scheme works

- 10.6 The Scheme sets out a procedure for making a complaint and details how complaints are handled by the Commissioner. Providers should familiarise themselves with these procedures.
- 10.7 The Commissioner will not notify the Home Office or Appellate Authorities of an investigation or outcome of a specific complaint, except where the Home Office or an Appellate Authority is the complainant. However, if asked by the immigration authorities, the Commissioner will confirm that a complaint is being or has been investigated. Providers may sometimes consider it helpful to their client's substantive legal case to inform the immigration authorities about a complaint against another provider.
- 10.8 The Commissioner will determine complaints in accordance with the civil standard of proof, ie the balance of probabilities.
- 10.9 Where a complaint is upheld by the Commissioner, he may:
- if the provider is registered, take account of the complaint when the provider next applies for continued registration, or in more serious cases, require the provider to immediately apply for continued registration;
 - if the provider is exempt, withdraw the exemption;
 - if the provider is either registered or exempt, and where the complaint is particularly serious or there has been a history of complaints, lay a disciplinary charge before the Immigration Services Tribunal (see paragraphs 10.11 - 10.14 below);
 - if the provider is a member of a designated professional body (or an equivalent EEA regulatory body), refer the complaint to the relevant body.
- 10.10 The Commissioner must keep the list of designated professional bodies under review and report to the Secretary of State if he considers that a body is failing to effectively regulate its members in relation to immigration advice and services. The Secretary of State has the power to remove a body from the list and to extend the scope of the Code of Guidance to apply to members of a particular body.

The Immigration Services Tribunal

- 10.11 The Immigration Services Tribunal deals with:
- appeals by providers against a decision by the Commissioner to refuse an application for registration or exemption;
 - appeals by registered or exempt providers concerning the determination of a complaint or the imposition of a sanction by the Commissioner;
 - referrals by the Commissioner of complaints concerning registered or exempt providers.
- 10.12 Complainants cannot appeal to the Tribunal where the Commissioner has dismissed a complaint against a provider, although if they believe that they have new information, they may ask the Commissioner to review the complaint.
- 10.13 Tribunal members must be legally qualified or have substantial experience in immigration services or immigration law. The Tribunal normally comprises three members, one of whom is legally qualified (though in relation to certain procedural matters, decisions may be made by a single legally qualified member).

- 10.14 Where the Tribunal upholds a complaint, it may:
- direct the Commissioner to take account of the complaint when the provider next applies for continued registration;
 - direct the provider to immediately apply for continued registration;
 - direct the Commissioner to consider whether to withdraw the provider's exemption;
 - direct the provider to repay a client in cases where an unreasonable fee has been charged;
 - direct the provider to pay a penalty to the Commissioner;
 - restrict, suspend or prohibit the provider from providing immigration advice or services.

11. Where to get further advice

- 11.1 The OISC can provide basic advice and guidance on the operation of the scheme and the exemption application process.
- 11.2 Organisations can contact their advice network or umbrella body for further information on the scheme. A list of advice network contacts is contained at the end of this briefing.
- 11.3 Organisations employing solicitors or barristers/advocates can contact their professional body for advice and guidance. Contact details are set out at the end of this briefing.
- 11.4 CLS Support is run by ASA and offers help and guidance on the CLS Quality Mark. This includes a free telephone consultancy service and written briefings to ASA members and organisations belonging to the following advice networks in England and Wales:
- Age Concern (England);
 - Dial UK;
 - Federation of Information and Advice Centres;
 - Law Centres Federation;
 - National Association of Citizens Advice Bureaux;
 - Shelter;
 - Shelter Cymru;
 - Youth Access.

We can be contacted on 0870 7700447 or by email at cls.support@asauk.org.uk. We are unable to provide detailed help on the regulatory scheme described in this briefing.

Getting further help

Advice network contacts

<p>John Edwards Age Concern England 1268 London Road London SW16 4ER 7468</p> <p style="text-align: right;">020 8765</p>	<p>Dave Murphy Northern Ireland Association of Citizens Advice Bureaux Regional Office 11 Upper Crescent Belfast Northern Ireland BT7 1NT 90231120</p> <p style="text-align: right;">028</p>
<p>Bob Stronge Association of Independent Advice Centres 303 Ormeau Road Belfast BT7 3GG 90645919</p> <p style="text-align: right;">028</p>	<p>Lynn Welsh Scottish Association of Law Centres 65 George Street Paisley PA1 2JY 7266</p> <p style="text-align: right;">0141 561</p>
<p>Lucy McKenzie Citizens Advice Scotland 26 George Square Edinburgh EH8 9LD 0156</p> <p style="text-align: right;">0131 667</p>	<p>John Stevenson Shelter Castle Walk Taunton Somerset TA1 4PW 354993</p> <p style="text-align: right;">01823</p>
<p>Management Helpline DIAL UK St Catherine's Hospital Tickhill Road, Balby Doncaster DN4 8QN 310123</p> <p style="text-align: right;">01302</p>	<p>Owen Burt Shelter Cymru 25 Walter Road Swansea SA1 5NN 469400</p> <p style="text-align: right;">01792</p>
<p>John Mulligan Federation of Information and Advice Services 4 Deans Court St Paul's Churchyard London EC4V 5AA 1800</p> <p style="text-align: right;">020 7489</p>	<p>Lorraine McLaren Shelter Scotland Fourth Floor Scotiabank House Edinburgh EH2 4AW 7170</p> <p style="text-align: right;">0131 473</p>
<p>David Beadle Law Centres Federation 18-19 Warren Street London W1P 5DB 8570</p> <p style="text-align: right;">020 7387</p>	<p>James Kenrick Youth Access 1a Taylors Yard Alderbrook Road London SW12 8AD 9900</p> <p style="text-align: right;">020 8772</p>
<p>National Association of Citizens Advice Bureaux Myddelton House 115-123 Pentonville Road London N1 9LZ Management Consultancy CLS Consultancy</p> <p style="text-align: right;">020 7833 7030 0845 120 2035 020 7833 7046/7134</p>	

Getting further help Designated professional bodies

<p>The Faculty of Advocates Advocates Library Parliament House Edinburgh EH1 1RF 5071</p> <p style="text-align: right;">0131 226</p>	<p>The Law Society 113 Chancery Lane London WC2A 1PC 1222</p> <p style="text-align: right;">020 7242</p>
<p>The General Council of the Bar 3 Bedford Row London WC1R 4DB 4000</p> <p style="text-align: right;">020 7440</p>	<p>The Law Society of Northern Ireland Law Society House 98 Victoria Street Belfast BT1 3JZ 614</p> <p style="text-align: right;">02890 231</p>
<p>The General Council of the Bar of Northern Ireland Bar Library Royal Courts of Justice Chichester Street Belfast BT1 3JP 349</p> <p style="text-align: right;">02890 562</p>	<p>The Law Society of Scotland 26 Drumsheugh Gardens Edinburgh EH3 7YR 7411</p> <p style="text-align: right;">0131 226</p>
<p>The Institute of Legal Executives Kempston Manor Kempston Bedford MK42 7AB</p>	



Name, address and contact details

Public telephone number:

**COMMITMENT TO MAKE A
QUALITY MARK APPLICATION –
ORGANISATIONS PROVIDING IMMIGRATION ADVICE**

This commitment applies **only** in relation to not-for-profit organisations providing immigration advice. Not-for-profit organisations who commit, by Monday 30th April 2001, to apply for the Community Legal Service Quality Mark, do not need to apply for exemption from the Office of the Immigration Services Commissioner until 31st October 2001. In order to benefit from this concession, organisations should sign and return the following declaration to:

Legal Services Commission, Supplier Development Group, 85 Gray's Inn Road, London, WC1X 8TX. Fax: 020 7759 0534

by **Monday 30th April 2001.**

Declaration

This organisation intends to apply for the Quality Mark by **31st October 2001.**

Name: _____ **Date:** _____

Signed: _____ **Position:** _____

