



Office of the Immigration Services Commissioner

Consultation to amend the Code of Standards and Commissioner's Rules

Initial consultation on proposed amendments
June 2013

OFFICE OF THE IMMIGRATION SERVICES COMMISSIONER

CODE OF STANDARDS AND COMMISSIONER'S RULES CONSULTATION

FOREWORD

This consultation is designed to seek your views on matters of style, structure and content in relation to the Commissioner's *Code of Standards* (the *Code*) and *Rules* (the *Rules*).

Part V of the Immigration and Asylum Act 1999 (the Act) makes provision for a scheme to regulate immigration advisers and service providers. Paragraph 3 (5) and (6) of Schedule 5 of the Act requires:

- (5) If the Commissioner alters the Code, he must re-issue it.*
- (6) Before issuing the Code or altering it, the Commissioner must consult—*
 - (a) each of the designated professional bodies;*
 - (b) the designated judges;*
 - (c) the Lord President of the Court of Session;*
 - (d) the Lord Chief Justice of Northern Ireland; and*
 - (e) such other persons appearing to him to represent the views of persons engaged in the provision of immigration advice or immigration services as he considers appropriate.*

Paragraph 1 (2) of Schedule 5 of the Act, with reference to the Commissioner's Rules, requires:

- (2) Before making or altering any rules, the Commissioner must consult such persons appearing to him to represent the views of persons engaged in the provision of immigration advice or immigration services as he considers appropriate.*

The OISC is conducting this consultation in accordance with the Act's requirements.

This is the first of two consultations. As no changes will be introduced to either document as a direct result of this exercise, an Impact Assessment is not being issued.

The consultation was launched on 03/06/13 and will remain open until 30/08/13.

While all the questions asked are important, you do not have to address all of them in your response. We would, however, appreciate detailed explanations for your answers, where appropriate.

We look forward to hearing from you.

How to Respond

Online - You can complete an online response form by clicking on the link below:

<http://www.surveymonkey.com/s/CodeofStandardsonlineResponseForm>

By email or post - You can download a copy of the response form by clicking on the link below:

[Consultation response form](#) (Word format)

[Consultation response form](#) (PDF format)

Please send your completed response forms no later than **30/08/13** to one of the following addresses:

Electronic: consult@oisc.gov.uk

By post: Sharon Harris
Code of Standards Consultation
Office of the Immigration Services Commissioner
5th Floor, Counting House
53 Tooley Street
London
SE1 2QN

If for any reason you are dissatisfied with the consultation process, please contact:

Clyde James
Head of Policy, Publications and Stakeholders
Office of the Immigration Services Commissioner
5th Floor, Counting House
53 Tooley Street
London
SE1 2QN

If you have any questions, please write to us at the above address, email us at consult@oisc.gov.uk, or leave a message on 020 7211 1613.

Confidentiality and Freedom of Information

The information you send us may need to be passed to colleagues within the OISC, published in a summary of responses received and referred to in the published consultation report.

All information contained in your response, including personal information, may be subject to publication or disclosure, if requested under the Freedom of Information Act 2000. By providing personal information for the purposes of the public consultation exercise, it is understood that you consent to its disclosure and publication. If this is not the case, you should limit any personal information provided, or remove it completely. If you want the information in your response to the consultation to be kept confidential, you should explain why as part of your response, although we cannot guarantee to do this.

The OISC is subject to the Freedom of Information Act 2002, and will consider any request for information relating to responses made to this consultation in accordance with that Act.

Introduction – The Immigration Services Commissioner and her Office

1. Part V of the Immigration and Asylum Act 1999¹ (the Act) introduced the regulation of immigration advice and services and created the role of the Immigration Services Commissioner. Her Office, the Office of the Immigration Services Commissioner (OISC), is an independent, UK wide, non-departmental, public body. The Commissioner is answerable to the Home Secretary and through her to Parliament.
2. Unless regulated by another body as explained below or exempted by Ministerial Order², it is illegal to offer immigration advice and/or services without being regulated by the Commissioner. The Commissioner has oversight regulatory responsibility for those who are regulated by a Designated Professional Body in Scotland or Northern Ireland and who provide immigration advice or services. The Legal Services Board (LSB) has oversight responsibility for the legal regulators operating in England and Wales, such as the Solicitors Regulation Authority (SRA) and the Bar Standards Board (BSB), which regulate lawyers giving immigration advice or services.
3. The Commissioner has regulatory, complaint-handling and law enforcement functions. The latter two are closely allied to, and directly supportive of, her regulatory function. Her duties include:
 - The regulation of the immigration advice sector and, in so doing, ensuring, so far as is reasonably practicable, that those who provide immigration advice or services –
 - a) are fit and competent to do so;
 - b) act in the best interests of their clients; and
 - c) do not knowingly mislead any court, tribunal or adjudicator in the United Kingdom or seek to abuse any UK immigration or asylum procedure or advise any person to do so;
 - The investigation of complaints about immigration advisers;
 - Law enforcement action against unregulated immigration advisers; and
 - The promotion of good practice by the immigration advice sector.
4. The Commissioner's regulatory scheme is based on four documents which set out what is expected of regulated immigration advisers in terms of skills, experience and aptitudes and of their organisations in terms of the way they conduct their business and the quality of the service they provide. These documents are:
 - The *Code of Standards*; (*Code*)
 - The *Commissioner's Rules*; (*Rules*)
 - The Complaints Scheme; and
 - The Guidance on Competence.
5. This consultation is about the *Code* and *Rules*. However, in understanding the regulated sector to which those documents apply, readers of this consultation may find helpful the brief summary below of the different types of organisations which the OISC regulates and the different advice levels for which organisations and advisers are authorised.

¹ Section 83(1) of the Act

² Ministerial Orders give specific exemption from regulation and relate to the NHS, publicly funded educational institutions and relevant employers.

6. The Act distinguishes between OISC regulated organisations by dividing them into two specific categories: “registered” and “exempt”. The OISC defines these as follows:
- Registered organisations are mainly those operating in the private sector. They charge for their advice or services either through a straightforward fee or via charges made as part of a larger package. This category would include, for example, a private college that offers advice as part of their student services. If voluntary and community sector organisations including charities and local authorities charge for their services to cover their costs, they are also included in this category. Some Registered organisations may hold Legal Services Commission contracts enabling them to provide free advice to some clients while charging others.
 - Exempt organisations generally operate in the voluntary or community sector. They do not charge clients for the advice or services they provide. They are referred to as ‘Exempt’ only because they do not have to pay the OISC’s registration and continued registration application fees.
7. The *Rules*, which apply only to registered organisations, specifically focus on financial management and control. Some *Rules* are repeated in the *Code* which, like the Complaints Scheme and the Guidance on Competence, applies to all regulated organisations.
8. Advisers are authorised to operate at one of three advice levels, and the organisation for which they work is authorised to operate at the highest advice held by at least one of their advisers. Thus, if an organisation has three advisers and two are authorised to give advice at advice Level 1 and one is authorised at advice level 3, the organisation will be regulated as an advice Level 3 organisation. The advice levels are:
- Level 1: Advice and Assistance** – organisations authorised at this level can provide only straightforward immigration advice within the Immigration Rules such as making uncomplicated applications for extension of business visas;
- Level 2: Casework** – organisations authorised at this level can do more complicated work such as submitting claims for asylum;
- Level 3: Advocacy and Representation** – organisations authorised at this level can do the most complicated work and can appear unsupervised before the immigration tribunals.

Why we are consulting on the *Code* and *Rules*

9. To remain an effective regulator the *Code* and *Rules* must be fit for purpose – current, effective and usable – for the OISC and for advisers. Further, as enforcement of the *Code* and *Rules* may lead to legal proceedings with cases coming before the First-tier Tribunal (Immigration Services), the Tribunal’s need to interpret these documents must also be recognised.
10. The Commissioner proposes to issue new versions of the *Code* and *Rules* to be implemented no later than September 2015. Good practice requires that such documents be reviewed approximately every five years. The *Code*’s last fundamental review took place in July 2007. Even if it was not time for us to undertake a review, we

would want to do so now considering the many changes that have taken place in the immigration advice market, such as the greater use being made of the internet by immigration advisers to attract clients and give advice. Our intention is that the documents ultimately produced as a result of this process will be fit for purpose until at least 2020.

A two-stage consultation process

11. This is the first of two consultation documents. This initial consultation concentrates on issues of style, structure and content.
 - Section A - Discusses the approach we should take to drafting the next version of the *Code* and *Rules*, specifically whether these should lean more towards a principle-based or prescriptive approach or continue with the balance currently applied in those documents;
 - Section B - Considers whether the presently separate *Code* and *Rules* should be consolidated into one document; and
 - Section C - Gives an indication of significant proposed changes that we are thinking about making to the content of the present *Code* and *Rules*. The subjects mentioned in this consultation are illustrative only and are not exhaustive.
12. The second consultation document, which we expect to publish in 2014, will be the proposed new version of the *Code* and *Rules*, the drafting of which will be influenced by the responses received to this consultation. It is also anticipated that, in order to make the *Code* more user-friendly and concise, the structure of that document will be substantially changed with Codes rearranged and, as appropriate, Codes consolidated.
13. To assist readers the current *Code* and *Rules* can be located via this hyperlink <http://oisc.homeoffice.gov.uk/servefile.aspx?docid=340>.
14. Consultation questions are included in each section and the full list can be found at the end of this document.

Section A

What approach should the OISC take in writing the new *Code* and *Rules*?

- a) Possible approaches
15. In the UK a variety of different activities are regulated, and there is a wide body of opinion about how regulators should regulate³ including:

Risk-based regulation - There is now general acceptance that a risk-based approach focusing on the greatest risks is the most effective; and

³ The Legal Services Board has concluded, for example, that good regulatory practice requires a regulator being outcomes focused, encouraging registrants to behave ethically and understanding the risks to consumers. The Professional Standards Authority, the oversight regulator of healthcare regulators, promotes "right-touch regulation" which it defines as applying the minimum regulatory force necessary to the risk being regulated and being proportionate and targeted in regulating that risk or finding ways other than regulation to promote good practice and high quality healthcare.

Principle-based regulation - In defining how a regulated sector ought to behave there has been a trend away from using prescriptive rules and a move towards employing broad principles.

16. This consultation considers what approach – principle-based or prescriptive – the OISC should take in preparing the next version of the *Code* and *Rules*. Simply put, a prescriptive regulatory code sets out in detail exactly what regulated persons are required to do. This approach sees codes as containing specific standards that must be met which, when complied with, will produce the desired professional ethical culture. A principle-based approach, on the other hand, moves away from detailed rules and instead sets out general outcomes thereby giving responsibility to the regulated to decide how best to undertake their activities. This approach sets the profession's ethical principles within the code with the intention that these will then be demonstrated by the behaviour of those regulated.
17. In the legal services sector there is now a preference for regulating mostly by principles. That said, there is no single ideal approach, and all regulators in determining their own position need to consider a number of factors including their particular statutory obligations, the nature of the sector they regulate and their regulatory experience to date.
 - b) Approaches taken by some other regulators
18. It may be helpful to consider the approaches taken by some other regulators. The SRA, which regulates solicitors in England and Wales, sets out in its *Code of Conduct* ten overarching principles such as 'act with integrity' and 'provide a proper standard of service to your clients' together with a Code of Conduct containing a set of mandatory outcomes and lists of indicative behaviours, which can be quite detailed.
19. Research published by the SRA⁴ on attitudes to their new approach – after one year's experience of it by solicitors – shows that the majority of firms seem to see benefits for themselves and their clients, with 85% saying that they would carry on doing what they do now even if the SRA ceased to require it. There are, however, still some concerns about the cost of compliance.
20. In contrast, the BSB's *Code of Conduct* takes a more traditionally prescriptive approach in specifying requirements for barristers. There are eleven parts to this Code, most of which contain a number of precise formulations of things that barristers must, or must not, do. Even Part III of the Code which sets out 'Fundamental Principles' is expressed in this way. A range of broader advisory material produced by the BSB is contained in separate guidance documents.
21. The General Pharmaceutical Council (GPhC) is the healthcare regulator that regulates pharmacists, pharmacy technicians and pharmacy premises. This is an essentially cohesive profession with standards of training followed by pre-registration supervision in employment.
22. The GPhC has decided on a principle-based approach as set out in its document, *Standards of conduct, ethics and performance*, using seven principles such as 'Make patients your first concern', 'Show respect for others' and 'Be honest and trustworthy'.

⁴ *Measuring the impact of Outcomes-focused Regulation (OFR) on firms* February 2013 <http://www.sra.org.uk/impactofr/>

Each standard is connected to between five and twelve detailed injunctions after the words 'you must'. These are more specific, but most generally still require judgement as to how to apply them, and some of these are also the subject of separate, more detailed guidance notes.

23. In another sector, PhonepayPlus, the regulator of premium rate telephone services, has over 3,000 providers on its register including large, well-established companies, charities and smaller and more transitory operations. The risks to customers from this sector are primarily financial, but there are also issues around children and other vulnerable users accessing inappropriate content. It is an area in which regulatory expectations need to be clear and unambiguous.
 24. PhonepayPlus has a Code of Practice which is grouped around six "outcomes". One of these is that consumers of premium rate services are fully and clearly informed of all information likely to influence their decision to purchase, including the cost, before any purchase is made. Each of these outcomes is followed by between three and eleven rules being mandatory requirements which are sometimes very specific.
- c) Principle-based or prescriptive – what approach should the OISC favour?
25. It is important to emphasise that the next edition of the *Code* and *Rules* does not have to be completely principle-based or completely prescriptive. It is not an 'all or nothing' decision. Similar documents issued by other regulators often include, as the current *Code* and *Rules* do now, a mixture of both approaches. Code 9, which requires advisers always to act in their client's interests, is an example of a principle-based code. An example of a more prescriptive code is Code 33, which sets out everything that must be included in a client care letter.
 26. The nature of the regulated sector – its maturity and complexity both in its makeup and what it does - is one of the critical factors that a regulator has to consider when deciding what approach to take. The organisations and persons that the OISC regulates are not homogeneous, having widely different business models ranging from well-established, business-oriented, for-profit organisations to small, not-for-profit bodies rooted in specific communities. The OISC's *Code* and *Rules* must be capable of regulating such a diverse group and ensuring that all organisations and advisers clearly and sufficiently understand what is required of them if they are to confirm their continued fitness and competence, while at the same time not burdening them with unnecessary or impractical requirements which remove any flexibility in demonstrating compliance.
 27. Equally important is the necessity for the OISC to consider the protection of clients and the integrity of the UK's immigration and judicial systems. In the case of immigration advice the risks can be very serious as bad immigration advice and services can, and do, ruin lives. People seeking immigration advice are often very vulnerable and do not feel sufficiently confident to challenge their adviser when they believe they are not acting correctly or competently.
 28. Further, the OISC needs to ensure that the meaning of the *Code* and *Rules* is clear and unambiguous, and that the reason for any particular code or rule to be included is easily understood. The OISC needs also to be aware that it is inevitable that any major shift away from a prescriptive approach towards one that is more principle-based will mean adjustments on the part of those regulated and a period of familiarisation. It has also been noted in other sectors that there can be a period of uncertainty over exactly what is required when such a shift of approach is made.

d) The relationship between codes and guidance

29. Irrespective of whether a regulatory code is formulated using principles or is prescriptive, the guidance produced to complement it is important. While there is no clear boundary between the two, as a general rule mandatory requirements – the things that people *must* do or risk penalties or disciplinary proceedings for not doing – are included in each code. Advisory, instructive, indicative or aspirational material – the things people *should* do or *ought* to do – is contained in the usually less formal guidance. Thus the SRA, for example, sets out in its codes the mandatory outcomes it requires solicitors to achieve together with illustrative material (the SRA’s use of “indicative behaviours” in its handbook) which explains how they might achieve what is required.

e) Codes to which the OISC might take a principle-based or a prescriptive approach

30. The following paragraphs explain where specifically in the next edition of the *Code* the OISC currently favours, subject to responses received to this consultation, taking either a more principle-based approach or continue with a generally prescriptive approach as reflected in the current document.
31. Using a principle-based approach Codes 19 and 21 to 23 could be replaced with one Code that simply requires advisers to keep up to date with immigration law and practice and to conduct their business in accordance with the OISC’s guidance on training. Thus, the current requirement of a training plan being documented and regularly reviewed would be removed from the *Code* and placed in guidance. However, the specific requirement for advisers to complete their Continuing Professional Development would be retained in the *Code* and would remain prescriptive.
32. We feel that the following codes should remain prescriptive setting out in detail what is required: Code 27, which deals with the role and responsibilities of supervisors of immigration advisers who wish to expand their areas of expertise or increase their competence; Code 33, which lists what advisers need to include in client care letters; Code 48, which requires organisations to have a written procedure for handling complaints; Code 64, which deals with the client account; and Code 86, which requires advice organisations to keep client records for at least six years.
33. Having said that, we feel that Code 28 – which details what a supervisor must do in the very specific area of random sampling of the supervisee’s work – could be moved to guidance, as could the requirement in Code 48 for organisations to keep a complaints log. We would want to retain the principle in Code 30 of advisers not discriminating, but Code 29, which requires organisation to have a written anti-discrimination policy, could be placed in guidance.
34. The codes dealing with an advice organisation’s management policies and structures and management of staff (Codes 52 to 59), the codes covering the keeping of records and case management (Codes 81 to 86) and the codes on engaging experts, interpreters and country experts (Codes 91 to 95) are also examples where much of what is contained now could be placed into guidance. This would allow those codes to concentrate clearly on the important main principles they contain having appropriate general management and staff policies and structures in place, keeping clear, orderly and accurate records, and selecting and using experts including interpreters appropriately.

Consultation questions

- A1. Do you think the next version of the *Code* and *Rules* should generally take a principle-based approach or prescriptive approach? Please explain which of these approaches you favour giving your reasons.
- A2. Please explain what approach (principle-based or prescriptive) you think the Commissioner should take with respect to the following Codes:
- a) Codes 19, 21 to 23 (paragraph 31)
 - b) Codes 27, 28, 29, 30, 33, 48, 64 and 86 (paragraphs 32 and 33)
 - c) Codes 52 to 59, 81 to 86 and 91 to 95 (paragraph 34)
- A3. Please explain if you think there are any specific Codes or Rules where a principle-based or prescriptive approach would be particularly appropriate.

Section B

Should the *Code* and *Rules* be consolidated into one document?

35. The Immigration and Asylum Act 1999 states that, “*The Commissioner may make rules regulating any aspect of the professional practice, conduct or discipline*” of registered persons and those working under their supervision⁵. Under the heading *Code of Standards* the Act says that, “*The Commissioner must prepare and issue a code setting standards of conduct which those to whom the code applies are expected to meet*”⁶.
36. As explained at paragraph 7 above, the *Rules* specifically focus on financial management and control and financial transparency and probity, and apply only to registered organisations. The *Code* covers a much wider area of regulatory requirements and applies to all regulated organisations registered and exempt.
37. At present the *Code* and *Rules* are contained in separate documents. However, the *Code*, with some exceptions, covers the same ground as the *Rules*. If the two were consolidated it would still be possible by, for example, the use of typeface or colour to indicate a specific rule within the text. With regards to this, we have provisionally identified a number of current rules which we consider should remain specifically as rules, although they could be included in the one document and distinguished from other provisions. These are Rules 1, 6, 8, 10, 11 and 15.

Consultation Questions

- B1. Please explain if you think that the *Code* and *Rules* should be consolidated into one document or if they should remain as two separate documents.
- B2. Please explain what Rule(s), if any, you feel should remain identified as specific rule(s) if the two documents were consolidated. In considering your answer you may wish to take into account the contents of paragraph 37 above.

⁵ Paragraph 1(1) Part 1 Schedule 5 of the Act

⁶ Paragraph 3(1) Part 1 Schedule 5 of the Act

Section C

Possible subjects for inclusion in the new Code

38. There are a number of additional subjects which we are considering including in the new Code, which are discussed in the following section.
- a) New legal entity
39. When a regulated organisation changes its legal status, such as from sole trader to partnership or becomes a company, the new legal entity created is not automatically within the regulated scheme. Therefore, before the change is made, it is necessary for the organisation to apply to the OISC for regulation of the new entity using the application form "Application for Regulation of a New Legal Entity".
40. Unfortunately we have found that organisations are not always submitting such applications. Not doing so places an organisation at risk as their new legal entity will be acting outside of the regulatory scheme. We therefore think that a prescriptive Code should be introduced requiring regulated organisations to submit the necessary application if they wish to change their legal entity.

Consultation Question

- C1. Do you agree that a Code should be introduced that requires regulated organisations which wish to change their legal status before doing so to submit an Application for Regulation of a New Legal Entity?
- b) Immigration advice and services provided via the internet
41. More clients are finding immigration advisers via the internet, and an increasing number of advisers are giving advice on line. In order adequately to address these developments, the Commissioner believes that the regulation of internet advice where clients are not in physical contact with their advisers should be specifically addressed in the Code. Areas that could be addressed include the requirement for organisations which do any work via the internet to:
- hold sufficient evidence of their clients' electronic communications; and
 - hold sufficient evidence on the client's file showing that the client has received their client care letter, had sufficient time to consider its contents and has explicitly agreed it.

Consultation Questions

- C2. Do you agree that it is necessary for the Code to include specific regulation on the matters mentioned at paragraph 41 above in respect of organisations which work via the internet?
- C3. In addition to the matters mentioned at paragraph 41 above, are there any other matters that you think the Commissioner should include in the Code with respect to the provision of immigration advice or services via the internet?

C4. If specific codes were introduced, do you think that these should be more principle-based or prescriptive?

c) Outsourcing work

42. The *Guidance on Competence* deals with the outsourcing of work as follows, “*OISC advisers must not conduct matters on behalf of other regulated advisers...unless such advisers are authorised to give advice for the same regulated organisation*”. There is evidence that some advisers are regularly outsourcing work to each other. For example, there have been cases of Level 2 advisers outsourcing advocacy work to Level 3 advisers while still retaining ownership of the matter concerned. This can create confusion for both the client in controlling their matter and for the OISC in regulating. Areas where confusion could arise because of this passing of work include case responsibility including the attribution of complaints and complaint handling and fees and payments.

43. The Commissioner is considering introducing a code that specifically deals with the outsourcing of work between advice organisations as the *Code* has more force than the *Guidance on Competence*.

Consultation Questions

C5. Do you think that organisations should be allowed to outsource their work to other regulated organisations?

C6. If you think that the outsourcing of work should be allowed between organisations, all or in part, please explain what restrictions or controls, if any, you think should be imposed.

d) Organisation or individual adviser

44. Code 3 states that, “*Within this Code 'adviser' means both an organisation or an individual providing immigration advice or immigration services in the course of business, whether or not for profit, within the UK, and includes a sole practitioner*”. The present reality is that the OISC regulates advice organisations and through them individual advisers working within those organisations. The *Code*, however, does place some specific personal obligations on individual advisers as illustrated below:

- Code 6 – advisers operating beyond their level of competence
- Code 9 – acting in the client’s best interest
- Code 12 – advisers abusing their position of trust
- Code 15 – conflicts of interest

45. The Commissioner believes that the *Code* should better reflect the reality of regulation and proposes that references to “adviser” in the *Code* should be replaced with the word “organisation” except where the obligation is clearly an individual one.

Consultation Question

C7. The Commissioner proposes that references to “adviser” in the *Code* should be replaced with the word “organisation” except where the obligation is clearly an individual one. Do you agree with the proposal?

e) Identifying the actions of specific advisers

46. It is sometimes difficult to tell from client files which specific adviser in a multi-person organisation has actually provided the immigration advice, in whole or in part. Very often documents are simply signed in the organisation's name. This particularly creates a problem when advisers within an organisation are approved at different levels.
47. While Code 81 requires that an adviser must keep clear, orderly and accurate records of contacts and dealings with clients and third parties, the Commissioner thinks that more is needed on this subject. She is therefore considering requiring organisations to ensure that the individual within an organisation who actually undertakes a specific piece of work is clearly identified on any material contained in the client's file and specifically in any communication sent to the client or to a third party.

Consultation Question

- C8. Do you agree with the proposal contained in paragraph 47 above, that organisations should be required to ensure that the individual within their organisation who actually undertakes a specific piece of work is clearly identified on any material contained in the client's file and specifically in any communication sent to the client or to a third party?

f) Client notification of and approval of payment

48. The OISC has become aware that on occasion funds have been withdrawn from client accounts or from their credit/debit cards for work done without them first being notified and given adequate time to so authorise. This can result in clients being dissatisfied, believing that they have been charged prematurely for advice and services. Further, there is the risk that the client will not have the opportunity to ensure that they have sufficient funds in their account to meet the withdrawal.
49. The Commissioner believes that a code should be introduced that prohibits payments being taken from a client account or from a client's credit/debit card without the client having been given at least five clear working days' notification of the intention to do so and to have authorised the payment.

Consultation Question

- C9. Do you agree with the proposal contained in paragraph 49 above that a code should be introduced that prohibits payments being taken from a client account or from a client's credit/debit card without the client having been given at least five clear working days' notification of the intention to do so and to have authorised the payment?

g) Other suggestions for inclusion in the new Code

50. We are also interested in receiving suggestions on any other matters which respondents think should be considered for inclusion in the new Code.

Consultation Question

- C10. Please make any suggestions for other matters which you think should be considered for inclusion in the new Code.

SUMMARY OF CONSULTATION QUESTIONS

Section A

What approach should the OISC take in writing the new *Code* and *Rules*?

- A1. Do you think the next version of the *Code* and *Rules* should generally take a principle-based approach or prescriptive approach? Please explain which of these approaches you favour giving your reasons.
- A2. Please explain what approach (principle-based or prescriptive) you think the Commissioner should take with respect to the following Codes:
- a) Codes 19, 21 to 23
 - b) Codes 27, 28, 29, 30, 33, 48, 64 and 86
 - c) Codes 52 to 59, 81 to 86 and 91 to 95
- A3. Please explain if you think there are any specific Codes or Rules where a principle-based or prescriptive approach would be particularly appropriate.

Section B

Should the *Code* and *Rules* be consolidated into one document?

- B1. Please explain if you think that the *Code* and *Rules* should be consolidated into one document or if they should remain as two separate documents.
- B2. Please explain what Rule(s), if any, you feel should remain identified as specific rule(s) if the two documents were consolidated. In considering your answer you may wish to take into account the contents of paragraph 37 of the consultation document.

Section C

Possible subjects for inclusion in the new *Code*

- a) New legal entity
- C1. Do you agree that a Code should be introduced that requires regulated organisations which wish to change their legal status before doing so to submit an Application for Regulation of a New Legal Entity?
- b) Immigration advice and services provided via the internet
- C2. Do you agree that it is necessary for the *Code* to include specific regulation on the matters mentioned at paragraph 41 of the consultation document in respect of organisations which work via the internet?

- C3. In addition to the matters mentioned at paragraph 41 of the consultation document, are there any other matters that you think the Commissioner should include in the *Code* with respect to the provision of immigration advice or services via the internet?
- C4. If specific codes were introduced, do you think that these should be more principle-based or prescriptive?
- c) Outsourcing work
- C5. Do you think that organisations should be allowed to outsource their work to other regulated organisations?
- C6. If you think that the outsourcing of work should be allowed between organisations, all or in part, please explain what restrictions or controls, if any, you think should be imposed.
- d) Organisation or individual adviser
- C7. The Commissioner proposes that references to “adviser” in the *Code* should be replaced with the word “organisation” except where the obligation is clearly an individual one. Do you agree with the proposal?
- e) Identifying the actions of specific advisers
- C8. Do you agree with the proposal contained in paragraph 47 of the consultation document which states that organisations should be required to ensure that the individual within their organisation who actually undertakes a specific piece of work is clearly identified on any material contained in the client’s file and specifically in any communication sent to the client or to a third party?
- f) Client notification of and approval of payment
- C9. Do you agree with the proposal contained in paragraph 49 of the consultation document that a code should be introduced that prohibits payments being taken from a client account or from a client’s credit/debit card without the client having been given at least five clear working days’ notification of the intention to do so and to have authorised the payment?
- g) Other suggestions for inclusion in the new *Code*
- C10. Please make any suggestions for other matters which you think should be considered for inclusion in the new *Code*.