

Regulatory Triage Assessment

Title of regulatory proposal	Merging the 'registered' and 'exempt' categories of organisations that are regulated by the Office of the Immigration Services Commissioner (OISC)
Lead Department/Agency	Home Office
Expected date of implementation	SNR 7
Origin	Domestic
Date	28/06/13
Lead Departmental Contact	Immigration Bill Team
Departmental Triage Assessment	Low-cost regulation (fast track)

Rationale for intervention and intended effects

The Office of the Immigration Services Commissioner (OISC) regulate firms, sole traders and third sector organisations providing immigration advice to the public. There are three elements to the rationale for this proposal:

1. The Government would like to simplify and clarify a confusing regulatory regime.
2. There are currently a set of weaknesses in the Commissioner's enforcement powers in relation to exempt organisations, aligning the regulatory regime with that of private sector organisations.
3. Under the current legislation, the Commissioner exempts not-for-profit organisations from paying a fee to the OISC. The Government believe that this decision should be made by the Government rather than the Commissioner. The Government plans to retain the position that not-for-profit organisations do not pay fees.

Viable policy options (including alternatives to regulation)

The Government propose to redraft legislation to merge the registered and exempt categories of regulated organisations into one regulated category. This will enable the Government to retain control of the decision over which organisation should pay registration fees, simplify the regime and address a set of issues in the Commissioner's enforcement powers.

The Government's review of Public Bodies in 2010 found a clear and continuing need for Government intervention in the immigration advice sector given the threat posed by unscrupulous advisors and the inability of the sector to regulate itself and respond to that threat effectively. For this reason, non regulatory options have not been considered.

Initial assessment of business impact

Under this proposal, the regulatory regime will remain unchanged for private sector organisations, meaning there will be no impact for businesses.

There are around 900 not-for-profit third sector organisations on which there would be a minor cost. These organisations will have to apply formally for renewal of their registration on an annual basis, including providing details about the advisers working for them. It is anticipated that this will require, on average, no more than an hour of administrative work for a single member of staff per year – which is suggestive of a total cost of £11k per year (that is less than £13 per organisation per year). There will no additional regulatory requirements on not-for-profit organisations as they are already subject to inspections and regulation by the OISC.

There would be further impacts on a very small number of organisations or advisers which the OISC consider to be acting improperly as the OISC aligns the regulatory regime with that of private sector organisations.

Organisations will also benefit from a reduction in confusion around the concept of exempted organisations, in particular whether it means exemption from regulation. The change will simplify the regime and help to drive improvements in the quality of advice provided to the public and the reputation of the not-for-profit immigration advice sector.

One-in, Two-out status

The proposal falls within scope of OITO and is classified as an IN under OITO methodology. The Equivalent Annual Net Cost to Business (EANCB, 2009 prices) is £0.01m per year

Rationale for Triage rating

The proposal will require some additional administrative work from third sector organisations in order to formally register with the OISC each year. The annual cost to third sector organisations is expected to be less than £1m per year.

Supporting evidence

1. The policy issue and rationale for Government intervention

The OISC was established in May 2000 under the Immigration and Asylum Act 1999 and became fully operational in April 2001. It is responsible for ensuring that:

- Those who give immigration advice are fit and competent and act in the best interests of their clients;
- Those advisers who should be within the regulatory scheme apply to be admitted or they can be prosecuted.

It is illegal to offer immigration advice and services, without being regulated by the OISC. Exceptions are those who are regulated by a Designated Professional Body, such as the Law Society of England and Wales, and those who have been exempted by a Ministerial Order.

There are a number of problems with the current regulatory regime with reference to the not-for-profit sector. The most fundamental of these is that, at present, it is a matter for the OISC to decide whether to exempt organisations from being registered, and therefore from paying a fee to the OISC. The Government considers that if a substantial category of organisations are to be exempt from paying a fee to an otherwise publicly funded regulatory body, this should be a decision for the Government, not for the body itself. However, the government does not propose to change the current approach or charge not-for-profit organisations a fee.

In addition, the OISC has also identified the following issues with the enforcement powers it has to deal with exempt organisations:

- At present an employee of an exempt organisation cannot be removed from the regulatory scheme without removing the entire organisation.
- Persons convicted of a relevant criminal offence cannot be disqualified from giving advice if they work for an exempt organisation.
- Unlike registered organisations, exempt ones are not required to submit a list of authorised advisors working for them. This has resulted in situations where such persons have provided advice outside the exempt organisation, resulting in uncertainty about whether they come within the regulatory scheme.

This change would also remove confusion that currently exists around the concept of exemption, in particular whether it means exemption from regulation (which is not the case).

2. Policy objectives and intended effects

The Government intends to change the way not-for-profit organisations register with the OISC. This would have a number of intended effects:

- The Government would own the policy decision not to charge not-for-profit organisations a registration fee.
- The proposal will solve the issues with the enforcement powers available to deal with exempt organisations, aligning regulation with that of private sector organisations.
- The proposal would simplify and clarify a confusing regulatory regime.

3. Policy options considered, including alternatives to regulation

The only option being considered is to merge the categories of 'registered' and 'exempt' bodies into a single regulated category. This will address a series of problems with the current legislation.

The Government's review of Public Bodies in 2010 found a clear and continuing need for Government intervention in the immigration advice sector given the threat posed by unscrupulous advisors and the inability of the sector to regulate itself and respond to that threat effectively. For this reason, non regulatory options have not been considered.

Any alternative way of addressing the aims above would be more complex and less flexible. It would require making separate provision for a) putting the exemption from paying fees on a statutory footing and b) strengthening the regulatory regime. The proposed approach addresses both points with a single measure and has the added advantage of simplifying the regulatory structure.

4. Expected level of business impact

There are around 900¹ voluntary organisations which will be affected by these proposals. Around half of these are Citizens Advice Bureaus and the great majority of remainder are small and micro organisations. These organisations will have to apply formally for renewal of their registration on an annual basis, including providing details about the advisers working for them. At present they provide equivalent information on an informal basis every year. There will no additional regulatory requirements on not-for-profit organisations as they are already subject to inspections and regulation by the OISC.

It is thought that the additional burden will be small, given that they generally provide the information informally already – on average no more than an hour of additional work for a single member of staff per year to provide a formal update to the OISC. At an administrative wage of £11.72², this amounts to total cost of £11,000.

There would be further impacts on a very small number of organisations or advisers which the OISC consider to be acting improperly. These would be the equivalent of specific enforcement measures, and could have both positive and negative impacts on businesses.

Organisations will be able to remove single advisers from their registration without having to reregister the entire organisation, which is likely to provide an administrative saving to organisations. We have not attempted to quantify this benefit. It will also enable the OISC to disqualify certain advisers who are convicted of a relevant offence from providing advice. Organisations will also benefit from a reduction in confusion around the concept of exempted organisations, in particular whether it means exemption from regulation. The change will help to drive improvements in the quality of advice provided to the public and the reputation of the not-for-profit immigration advice sector.

¹ OISC (2012) Annual Report and Accounts 2011/12 Available from <http://oisc.homeoffice.gov.uk/servefile.aspx?docid=315>

² Median wage for administrative occupation. SOC code 41. Annual Survey of Hours and Earnings. (2012) Includes on-costs of 16.4% inline with BIS guidance.