

Welcome to this Special Edition of the OISCNews



I am delighted that the changes made by the Immigration Act 2014 to the OISC's regulatory scheme will be implemented on Monday, 17 November 2014.

Back in 2009, the Home Office's review of the OISC recommended that there should be changes to the scheme that would aim to provide "more effective oversight of the sector and better value for the taxpayer".

The Home Office stated that these changes would be achieved "by consolidating and improving the OISC's legislative powers and introducing new measures that will allow for greater levels of intervention against those who are incompetent or unfit, looking to abuse individuals seeking immigration advice/ services or abuse the system."

The provisions that will come into effect later this month will mean a simplified scheme for both clients and advisers through the amalgamation of the two categories of regulation into one - that of 'registration'. Additionally, an explicit power to inspect, a power to enter premises on production of a warrant, a power to remove an unfit or not competent person and the ability for the OISC to be able to apply to the First-tier Tribunal (Immigration Services), (the Tribunal) for suspension of a regulated person will all provide for a more effective regulatory system.

This newsletter explains the new provisions and, most importantly, what action the previously 'exempt' organisations must take to continue to be able to provide regulated immigration advice and services



The Changes Explained

Abolition of 'Exemption'

Who does this affect?

Organisations whose 10 digit OISC reference number begins with the letter "N"

This change only affects those organisations who received an 'exemption' from the Commissioner to be able to provide immigration advice and/or services. These are organisations that are not-for-profit businesses which do not charge their clients for the immigration advice and/or services they provide. Organisations which have a 10 digit OISC reference number which begins with the letter 'N' fall into that category.

What is changing?

The 2014 Act abolishes the Commissioner's power to 'exempt' organisations. All organisations that are currently 'exempt' will automatically become registered by the Commissioner with effect from 17 November 2014. However, unlike under 'exemption', all registered organisations will need to apply annually for continued registration.

Soon after 17 November 2014 the OISC will be sending a letter of registration authorising each previously 'exempted' organisation to continue to provide immigration advice and/or services (in line with their current authorisation) so that there is no break in an organisation's authorisation to provide advice and services.

That authorisation will last until **31 January 2015**.

The letter will also explain in detail how to apply for continued registration.

Each previously 'exempted' organisation must apply for continued registration before 31 January 2015 if it wants to continue to provide immigration advice and/or services regulated by the OISC.

Please note Citizens Advice Bureaux that operate at OISC Level 1 will **NOT** need to apply for continued registration.

Organisations will pay no fee for their application where the organisation-

- (a) provides immigration advice and/or immigration services in the course of a business that is not for profit; and
- (b) does not charge a fee, directly or indirectly, for the provision of that advice or those services.

Organisations that are unable to meet this criteria must pay the application fee as set out in the application form.

The OISC will consider each application for continued registration. We aim to decide all applications no later than **31 March 2015**.

Provided an organisation makes its application before **31 January 2015**, the organisation will be able to continue operating while the OISC considers their application.

However, the earlier an organisation makes its application for continued registration after **17 November 2014** the earlier the OISC will be able to decide it and, where approved, provide that organisation with assured consistency of authorisation.



The Changes Explained

Should a previously 'exempt' organisation fail to apply by **31 January 2015**, their registration may be cancelled and the organisation will then no longer legally be able to provide immigration advice and/or services after that date.

Organisations whose 10 digit OISC reference begins with the letter "F" need take no action

Important dates:

17 November 2014 – Previously 'exempted' organisations automatically become OISC registered organisations.

From 17 November 2014 – OISC will send letters of registration to previously 'exempted' organisations with instructions on how to apply for continued registration.

31 January 2015 – Deadline for applications to be made for continued registration for previously 'exempted' organisations.

31 March 2015 – OISC aims to have decided all such applications for continued registration.

Power to Inspect

Who does this affect?

All OISC regulated organisations and advisers.

What is changing?

The Act expressly recognises that the Commissioner has the power to carry out audits or inspections of premises and make enquiries about the activities and businesses of those who are regulated or who wish to become regulated



Immigration Act 2014



The Changes Explained

Power to Enter Premises

Who does this affect?

All OISC regulated organisations and advisers.

What is changing?

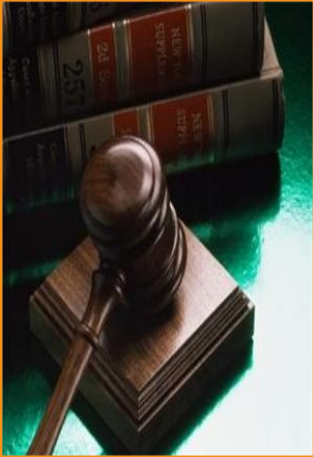
The 1999 Act provided the OISC with the power to enter a regulated person's premises (but not a private residence) when investigating a complaint and to be able to require the production of documents and computer material without a warrant.

That power has been replaced with the power to enter a registered person's premises, irrespective of it being a dwelling, to carry out any of the Commissioner's functions on production of a warrant issued by a Justice of the Peace (or in Scotland the Sherriff).

The OISC's practice of agreeing the time and dates of inspections with the regulated sector will remain our usual practice. However, where organisations seek to avoid or frustrate that process, the Commissioner can now obtain a warrant to secure entry to the premises where registered organisations are providing immigration advice and/or services. Similarly, if the Commissioner has need to investigate a complaint or inspect a premises at short notice, for example where she has reason to believe that serious non-compliance issues are being practiced, she can also secure a warrant for immediate entry.

The Commissioner must enter premises at a "reasonable hour" and she can require material to be produced and in a form in which she can take away.

Failure to comply and assist the Commissioner can result in the cancellation of the organisation's or adviser's registration.



The Changes Explained

Power to Apply for the Suspension of an Adviser

Who does this affect?

All OISC regulated advisers.

What is changing?

This new power allows the Commissioner to apply to the Tribunal to suspend a regulated adviser from providing immigration advice and/or services where the adviser has been charged with certain serious criminal offences.

Those offences are-

- o An offence involving dishonesty or deception;
- o An indictable offence; or
- o An offence under section 25 or 26(1)(d) or (g) of the Immigration Act 1971 (these are offences around facilitation of entry to the United Kingdom).

If the Tribunal grants the application, the adviser will remain suspended until the criminal proceedings are resolved.

The Commissioner is under a statutory duty to record the person's suspension until the criminal proceedings are resolved in the register of organisations and advisers that must be made publicly available.

Once the proceedings are resolved the Commissioner must decide whether the person remains fit and competent to be an OISC regulated adviser, in which case the suspension will be removed, or cancel that person's registration.





The Changes Explained

Power to cancel the registration of an organisation or an adviser

Who does this affect?

All OISC regulated organisations and advisers.

What is changing?

Previously the Commissioner had the power to withdraw authorisation of an 'exempted' organisation where it was no longer fit or competent, but could not do this in respect of a 'registered' organisation. With regards to those organisations she had to wait for an application for continued registration and refuse it or substantiate a complaint and lay a charge before the Tribunal.

The 2014 Act rectifies this situation by allowing the Commissioner to cancel both an organisation's and an individual adviser's registration at any point due to one or more of the following circumstances occurring:

- o The organisation or the adviser asks for it to be cancelled;
- o The adviser dies or the organisation is dissolved or wound up;
- o The adviser is convicted of an offence under section 25 or 26(1)(d) or (g) of the Immigration Act 1971;
- o The First-tier Tribunal directs the Commissioner to cancel the registration; or
- o The Commissioner considers the organisation or adviser is no longer fit or competent to provide immigration advice or services. For example following the determination of a complaint or an inspection.

Organisations and advisers may appeal to the Tribunal against a decision by the Commissioner to cancel a person's registration for no longer being fit or competent.

The full text of the Immigration Act 2014 can be found using this link http://www.legislation.gov.uk/ukpga/2014/22/pdfs/ukpga_20140022_en.pdf