



EARNING THE RIGHT TO STAY: A NEW POINTS TEST FOR CITIZENSHIP – UKBA CONSULTATION

1. The Office of the Immigration Services Commissioner (OISC) was established by the Immigration and Asylum Act 1999 (the Act) to regulate those persons that provide immigration advice and/or services as defined by the Act. Section 82 of the Act specifies that the Commissioner must determine that those providing advice in relation to a “relevant matter” are fit and competent to do so. The same section includes “nationality and citizenship under the law of the United Kingdom” as a ‘relevant matter’, that is a matter subject to regulatory control.
2. The OISC currently regulates 93 local authorities that undertake the Nationality Checking Service (NCS). These local authorities accept, notarise and forward applications for British citizenship or nationality to UKBA. These providers do not give nationality advice, i.e. they merely confirm that the forms are correctly completed, copy the documents for the applicant and send the originals to UKBA. Paragraph 2.20 of the consultation paper states that there is a clear case for looking into options to create an enhanced NCS which assumes responsibility for verifying active citizenship before sending forward a ready-to-decide application to the UKBA. Paragraph 2.22 states that, in addition to a simple “check and send” service provided by local authorities, there is potential for the service to extend into the provision of simple advice and sign-posting.
3. The rationale given in the consultation for this proposal is that current NCS arrangements provide a solid foundation to extend the three-way relationship between the migrant, local authority and UKBA (paragraph 2.17). Further, it continues, while UKBA is not seeking to impose a duty on local authorities to deliver this service, an extension of the number of local authorities working in partnership is expected (paragraph 2.25).
4. The Impact Assessment that accompanied the consultation paper states at page 5 that to deliver increased Local Authority involvement in Earned Citizenship UKBA will work with the Local Government Association and individual local authorities to increase capacity around the country to guarantee accessibility for migrants. There are various ways suggested that this could be achieved:
 - Mandating applicants to submit applications through the service (either on the basis of complete coverage or limited to those applications with an active citizenship element);
 - Incentivising the use of the service through a premium service standard.
5. The Impact Assessment does not, however, take into account the extra regulatory burden that this will impose on the OISC. The OISC is under a statutory duty to ensure that those providing immigration advice and/or services are fit and competent to do so. Any organisation giving more advice therefore imposes a greater the duty on the OISC to test their fitness and competence. Indeed, the costs of regulation are not considered at all, and given the greater advisory role envisaged for the local authorities, their costs



will also increased. Recognising the nature of the advice that may be provided, regulatory costs may in fact double.

6. Moreover, the Impact Assessment does not consider the consequences for regulated advisers that are pursuing a legitimate business interest in providing this service in competition with the local authorities. The consultation paper and Impact Assessments imply that the service provided by local authorities under NCS is somehow better than that provided by other advisers. The logical progression then seems to be that the quality of advice provided by the local authorities under the proposed extended scheme would also be better. This has not been borne out by our experience at the OISC. Since the inception of the NCS in 2005, we have received 9 complaints about local authority, NCS providers, of these 3 were fully substantiated, 1 complaint was outside of our remit; 1 was unsubstantiated, 1 provider is no longer regulated while 3 cases remain open. It would be wrong to assume that advice from local authorities will be sound simply because it came from that source.
7. The proposals could, if they result in work being directed away from advisers to local authorities, have an unintended, indirect impact on the number of small business serving black and minority ethnic communities resulting in a reduction of access to wider immigration advice. In any event, there will also be a greater regulatory burden on advisers, as stated above in paragraph 5, the need to test advisers' fitness and competence will be increased the more advice they give. This will create more work for the OISC that will have to pass on this burden to advisers in terms of greater competence assessment and CPD requirements.

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