

This document sets out what assistance individuals and organisations may provide to those people who have queries regarding their immigration position or need advice and assistance with an immigration matter. It also explains what work falls for regulation by the Office of the Immigration Services Commissioner (OISC) or another legal services regulator such as the Solicitors Regulation Authority, Bar Standards Board, CILEx Regulation or equivalent bodies operating in Scotland or Northern Ireland.

The Immigration and Asylum Act 1999 (as amended, the 1999 Act), sets out the work that can only be provided by a person who is regulated to do so. To provide immigration advice and services when not regulated is a criminal offence so it is important for individuals and organisations who wish to assist migrants and those with immigration and settlement matters, to understand what they can and cannot do.

Once you have read this document if you are still unsure whether the work you wish to do requires regulation, you can e-mail the OISC [at VSS@OISC.GOV.UK](mailto:VSS@OISC.GOV.UK) setting out the work you would like to carry out

What is Immigration Advice?

The 1999 Act defines ‘immigration advice’ in section 82. It is described as advice relating to **a particular individual** given in connection with one or more ‘**relevant matters**’.

Providing advice to a particular individual

In order to give advice to an individual it is necessary to have an understanding of the individual’s specific circumstances. Organisations which publish, display or present **general** information about immigration policy and procedures, but do not relate this to **individual** cases, are not providing immigration advice which requires regulation.

Publishing general information that might be applicable to many people is not considered immigration advice that requires regulation. People are giving ‘**advice**’ to someone if they provide an **opinion** on a course of action or a range of options a person might take based on the information they have provided.

Relevant Matters

A Polish community support group has produced an information booklet regarding the EU Settlement Scheme. It is providing this free to those who ask questions about their status as a result of the UK’s exit from the EU.

The support group do not need to be regulated by the OISC in order to produce or distribute this general information booklet.

Anna contacts the support group to ask if she can meet with someone regarding her immigration status as she is a non-EEA national and her marriage to her Polish husband has broken down. Anna is uncertain as to whether her husband has applied for settled status and what her position now is.

In order to advise Anna the support group would need to be registered with the OISC and the individual providing advice would need to be authorised, having received relevant training and passed the appropriate OISC assessment. If they are not registered by the OISC they should signpost Anna to a regulated immigration adviser.

The 1999 Act provides us with a list of relevant matters. They include:

- Asylum claims
- All immigration applications and any conditions associated with immigration status
- Nationality Law (i.e. how to become a British Citizen)
- Unlawful entry to the UK
- Removal and deportation from the UK
- Immigration Bail (i.e. the basis on which an asylum seeker or an irregular migrant can be released)
- Any appeal or judicial review connected to any of the above

Altan is a Turkish National. He has been living in the UK where he has for some years been running his own business. He believes he needs to apply for permission to stay under the European Communities Association Agreement (ECAA) route and will need to show that his business is viable. He has made an appointment to speak to his accountant as he believes he will need to get some financial statements to support his application.

Altan's accountant can prepare a full set of his accounts for him - the preparation of business accounts is not a relevant matter. In preparing them she is acting entirely on Altan's brief and is not concerned with the purpose for which the documents will be used.

Altan's accountant has had similar requests from other clients and is aware that accounting requirements are different depending on whether the applicant is in business as a sole trader, director of a limited company or legal partnership.

Altan's accountant can, without the need to be regulated, advise Altan on what type of evidence would be suitable for his business. She might also draw his attention to anything that might need further advice on - for example a significant level of debt owed by the business. She cannot however assist him in completing his application or advise on whether his document or position meets the requirements unless she is registered with the OISC.

What is an Immigration Service?

A person is providing a '**service**' if they take any action on behalf of an individual in order to pursue or represent their matter, for example to the UK immigration authorities such as, UK Visa and Immigration (UKVI) or the Immigration Tribunals.

Providing services to a particular individual

A voluntary organisation which provides support to detainees and their families has offered to assist a client to try to locate documents that were left at their accommodation when they were detained. The client needs these documents to support an application for release from detention.

The organisation does not need to be registered with the OISC to help locate these documents for the client.

When the documents are located the client asks if the voluntary organisation can use the documents to make an application for them to be released from detention. The documents clearly show that the person has valid leave and so no representations should be needed.

The organisation would need to be registered with the OISC to submit these documents to the Secretary of State as part of a bail application. The organisation can however, with the client's permission, forward the documents to the client in detention or to a legal adviser or another person without needing to be registered with the OISC.

The 1999 Act also states that the provision of immigration advice and services requires regulation where it is provided:

- a) in the United Kingdom (regardless of whether the persons to whom they are provided are in the United Kingdom or elsewhere); and
- b) in the course of a business carried on (whether or not for profit). **Advice**

and/or services provided by a person in the United Kingdom

Only immigration advice and/ or services provided by an organisation or individual in the UK falls to be regulated under the 1999 Act.

An organisation based in the UK which advises persons in relation to a 'relevant matter' who are overseas, needs to be regulated to provide immigration advice and services.

Similarly a firm based overseas which travels to meet clients in the UK or has a representative who meets clients in the UK and provides immigration advice/services would need to be regulated.

Wang Shu is studying engineering at a university in Belfast. Her student visa is due to expire in a few months and she would like some advice on how to stay in Northern Ireland to work. She has spotted a firm on the internet that offers advice to students about immigration matters, they are based in Dublin so she could easily go to see them if need be.

As the immigration advice firm is based in the Irish Republic it does not need to be registered with the OISC in order to advise Wang Shu. However if a legal representative from the firm were to meet Wang Shu in Northern Ireland they would then be committing a criminal offence if they provide immigration advice and/or services to her there.

Wang Shu would need to be careful as any advice and/or services provided to her online or in the Irish Republic would not be subject to any regulatory checks on fitness or competence by the OISC. Wang Shu might also check if the university can advise her as it may be able to help and does not need to be registered with the OISC to provide immigration advice and/or services. See the section below on Ministerial Exemptions.

Advice and/or services provided in the course of a business

Immigration advice and/or services provided by profit-making organisations will always be considered as giving advice in the course of a business. Further, the immigration advice and/ or service do not need to be provided by a business that is exclusively an immigration business.

Charitable organisations providing immigration advice and/or services are also providing advice in the course of a business. It is irrelevant if the organisation only provides advice to its members or does not charge for its advice or services. Such groups if giving advice or services to individuals related to a relevant matter would need to be regulated to do so.

Occasional immigration advice and/or services given to immediate family members and close friends does not require regulation and of course no fee can be charged for this work. Those who begin to give advice more widely or frequently will need to be regulated.

Nira would like her mother to visit her from India and stay with her in the UK for a few months. Nira has a friend, Varun, at the local temple who she has known for a long time and who advised her neighbour on a similar application many years ago. She e-mails him to ask if he can advise her.

Varun does not need to be registered with the OISC to advise Nira about her mother's visit and he can help her complete the application form if need be. He must be acting as a friend and not her legal representative and cannot charge her for this service. He should not advise her at all if he is unsure of the process and he must not begin to advise other people at the temple on an ongoing basis, to do so would risk committing a criminal offence. He must explain to Nira that he is not a qualified adviser or regulated to give advice and explain that he is giving advice purely as a friend. Nira should consider carefully whether she should follow Varun's advice or speak to a regulated adviser.

Despite making clear that he is not a legal adviser (he already has a full time job) Varun finds more and more people seem to be contacting him for help. He is extremely interested in immigration law and would like to help the local community if he could but he is concerned about breaking the law.

Varun may want to speak to the temple about whether they would like him to offer free advice officially for the temples' devotees. Varun may need some formal training but the temple can if they wish, apply for registration with the OISC as an organisation with Varun put forward as an applicant adviser. Equally, Varun can look to set up his own community organisation and apply for registration with the OISC. In either case Varun must not provide immigration advice and services until his registration has been approved.

Organisations such as Local Authorities may have court ordered authority to act on behalf of a vulnerable adult or child in care. In such circumstances assisting the vulnerable adult or child by providing free immigration advice or assistance does not require OISC regulation, as the assistance is given in a relationship which is akin to that of a parent or family member with care responsibilities.

An application made under the EU Settlement Scheme can be made on behalf of an adult applicant with mental capacity issues and/or care or support needs by another appropriate third party, for example a friend, relative, carer, social worker, support worker or legal representative.

Professionals such as carers, social workers or support workers can also provide technical assistance in completing the application without the need to be regulated by OISC, but they should ensure that they are not providing immigration advice. For

example, they may provide assistance in completing and submitting the application form, by explaining what the form is asking for and entering the applicant's responses.

Second-tier advice

Second-tier advice is advice given normally by one advice service to another. If you only provide second-tier advice you do not require registration as you are not advising a client on their immigration matter.

A refugee support organisation offers a general advice line for community voluntary organisations that have queries about the asylum process and procedure.

The refugee support organisation does not need to be registered with the OISC to give general advice through their advice line to community voluntary organisations.

Zola is a national of the Democratic Republic of Congo. He has seen the advice line number in a leaflet about local community support services and calls as he would like some legal advice and representation to make an asylum claim.

The refugee support organisation would need to be registered with the OISC in order to act as Zola's legal representative in making an asylum application or to advise him on the merits of his case. The organisation can, however, explain to Zola how the asylum process generally works and look to signpost him to a regulated adviser without need to be registered itself.

Advice on access to public services

Advice or assistance on accessing any services such as welfare benefits, medical services, housing or education assistance, which might be affected by the person's immigration status, but does not of itself affect that status, do not fall for regulation under the 1999 Act.

Mariam is an Iranian national and currently has an asylum application pending with the Home Office. She has been very unwell but is not sure if she can register to see a doctor and is afraid of doing anything that might jeopardise her application. She therefore approaches her local church welfare group for advice.

The church group can advise Mariam regarding accessing medical services without the need to be registered with the OISC.

Mariam's application for Asylum is successful and she is granted Refugee Status. She returns to the church group to ask if they will help her to secure a rental property by writing a letter to her prospective landlord about her entitlement to live in the UK.

The church group can write a factual letter for Mariam explaining that she has Refugee Status and what this means in relation to her right to live and work in the UK.

Advice related to criminal proceedings

Advice given in connection with representing an individual before a court in criminal proceedings or matters ancillary to criminal proceedings also falls outside of the scope of OISC regulation.

A college law clinic assisted by local solicitors has begun to offer a drop-in centre where local residents can get free initial advice on legal matters from students. They are approached by a young Dutch man who has been granted pre-settled status under the EU Settlement Scheme. He has been issued with a summons related to a failure to insure his car. He wants to know what action he should take regarding the summons; but he is also concerned that the action may affect his future application for Settled Status.

Unless the law clinic is registered with the OISC, students cannot advise him in relation to the effect of the summons on his immigration status. However, they are free to advise him in relation to the criminal matter and may want to signpost him to a registered adviser in relation to his immigration position.

Signposting and non-technical assistance

Where it is identified that a person needs professional immigration advice and/or services in order to take their immigration matter forward, simply '**signposting**' that person to an authorised adviser is not an activity that is regulated by the Commissioner.

Similarly, signposting to published guidance, including information available on [gov.uk](https://www.gov.uk) is also permitted without having to be an authorised adviser. Other signposting could be to Assisted Digital.

If someone has an ongoing immigration matter that is being dealt with by an authorised adviser and a person is supporting the individual in dealing with the legal representative - perhaps by translating documents for them, taking them to their meetings with their legal representative or helping them to understand the information their legal representative has requested, then that person does not need to be regulated to provide this kind of assistance.

Lorena has been a member of a Brazilian expat group in London since she moved to the UK with her Portuguese husband three years ago. She has been undergoing cancer treatment which was further complicated by the pandemic outbreak and while she and her husband knew that they needed to make an application under the EU Settlement Scheme this year, they did not know that this application should have been made by 30 June 2021. Lorena has instructed a legal representative who has advised her that she can make a late application. He has asked her to collect documents related to her treatment to explain why her application is being made late. The adviser has asked for extensive documentation from her doctors and Lorena is feeling extremely stressed. She finds the adviser difficult to talk to, her English is not great and she struggles to understand the legal language the adviser uses. She approaches the expat group for advice.

While not registered to provide immigration advice and/or services the expat group can help Lorena by translating letters from the legal adviser and explaining what the adviser is asking her to do. They can support her in getting together the documents she needs and translating them if need be or visiting the adviser with Lorena. They can signpost her to guidance on [GOV.UK](https://www.gov.uk) about reasonable grounds for applying late, available at: [EUSS casework guidance \(publishing.service.gov.uk\)](https://www.gov.uk/guidance/euss-casework-guidance), and translations of the guidance on applying to the EUSS in European languages, available at: [Apply to the EU Settlement Scheme \(settled and pre-settled status\) translations - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/apply-to-the-eu-settlement-scheme-settled-and-pre-settled-status-translations)

The expat group is concerned about the advice that Lorena has been given. They are not sure about the level of documentation the adviser is insisting on as he has rejected a number of clear reports and are worried about delaying the application being made.

If the group are concerned that Lorena may not be getting good immigration advice and/or a good service, they can encourage her to make a complaint to the OISC or they can also signpost Lorena to another regulated immigration adviser.

Form filing and technical assistance

Where individuals are submitting their own applications to UKVI and a person is solely translating the forms or a guidance document, or is helping the individual to understand how to follow the instructions provided by UKVI for the submission of their documents, the person assisting the applicant does not need to be registered with the OISC.

Kostadin was granted settled status under the EU Settlement Scheme in April 2021. He would now like to apply for his partner Silvia to join him in the UK. He has read the guidance documents and feels confident that he can demonstrate that he and Silvia were in a durable relationship prior to December 2020 and that their relationship still exists. As Silvia holds a biometric passport from an EU country Kostadin has been told he can use an ID document checking app but is not sure how to set this up.

Any digital assistance with the application does not require the person to be registered with the OISC as long as Kostadin is still making the application himself.

Kostadin is able to get assistance through his local library to install and use the app. In completing the application it occurs to him that while Silvia and he have been together for some years because of work commitments they have often had to live apart and is unsure if this will cause a problem. He asks the librarian who is assisting him for some advice.

The library staff cannot advise Kostadin about the requirements or what evidence he should submit. If Kostadin remains unsure, the library staff can help him to find a regulated immigration adviser who may be able to advise him.

Employers and Educational Bodies

Employers and certain education bodies may provide advice to their employees and their students without the need to be regulated by the OISC if they meet the requirements of the Ministerial Exemptions. Further details can be found on pages 11 and 12, which sets out **the three** Ministerial Exemptions that apply to the 1999 Act.

Employers and educational bodies may themselves sometimes seek advice from organisations as to whether the employees they may wish to recruit or students they wish to offer places to, are restricted in any way by their immigration status.

Those organisations that offer guidance to employers or educational bodies in general terms (for example regarding the immigration rules around workers or students) would not require regulation.

Those organisations also do not need to be regulated if they are engaged to administer the employer or educational body's Certificate of Sponsorship (COS) allocation, or undertake compliance checks on its staff.

However, should that organisation advise on a particular client matter, or provide a service by acting as the legal representative for an employee or student pursuing an application with the Home Office, this work would need to be regulated.

A consortium of small businesses that employ a large number of agricultural workers is considering hiring a organisation to give them general advice about the migrant workers' right to work in the UK.

The organisation does not need to be registered with the Commissioner to advise the employers about the general leave conditions attached to the workers' immigration status.

The organisation would, however, need to be registered to advise the individual workers in relation to any required leave to enter or remain for purposes of work.

They would also need to be registered if they wished to make applications on behalf of the employers to extend the leave granted to their employees and assign an individual COS or Confirmation of acceptance for Studies to support a Further Leave to Remain application.

It should be noted that employers can themselves; both advise their employees about their immigration matters and make an application on their behalf without the need to be registered with the Commissioner, if they offer this and other advice free of charge. See section below on Ministerial Exemptions

Ministerial Exemptions

The Secretary of State currently provides three exemptions (through Statutory Instruments) from the requirement to be regulated by the OISC. This means that organisations operating in line with the exemptions can provide immigration advice and services without needing to be regulated by the Commissioner.

Statutory Instrument No. 235 Immigration and Asylum Act 1999 (Part 5 Exemption: Licensed Sponsors) Order 2022. *(This Order replaces the Immigration and Asylum Act 1999 (Part V Exemption: Licensed Sponsors Tiers 2 and 4) Order 2009 (as amended), which it revokes.)*

The Order exempts employers and educational establishments who hold sponsor licences, issued by the Home Office, from the general prohibition, contained in [Part V of the Immigration and Asylum Act 1999](#), on providing immigration advice and services, unless registered, authorised or otherwise exempt under section 84 of that Act.

You are exempt from registering with the OISC if you are a licensed sponsor. The exemption is restricted to immigration advice and services provided free of charge by sponsors to people they are directly sponsoring (and, if applicable, their immediate family members) in connection with their application for entry clearance or leave to enter or remain in the UK on a sponsored work or study route.

Article 2 of the Order specifies “licensed sponsors” for this purpose, when providing immigration advice or immigration services in specific situations described in article 2(2) and (3). Licensed sponsors are persons licensed by the Secretary of State who, in accordance with the United Kingdom immigration rules, sponsor individuals from abroad to do particular work or attend particular courses of study in the United Kingdom. Two registers of licensed sponsors are maintained by the Home Office, and article 2(5) of this Order defines “licensed sponsor” as a person listed in either of those registers. The registers are accessible online via links set out in the footnotes ^{(1), (2)}.

1. The register of licensed sponsors: students is accessible via this link

: <https://www.gov.uk/government/publications/register-of-licensed-sponsors-students>.

2. The register of licensed sponsors: workers is accessible via this

link: <https://www.gov.uk/government/publications/register-of-licensed-sponsors-workers>.

Statutory Instrument 2003 No 3214 – The Immigration and Asylum Act 1999 (Part V Exemption: Relevant Employers Order 2003 *(Amended by The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020 (SI No. 1309))*

This is also known as the ‘Exemption of relevant employers’. You are exempt from registering with the OISC if you:

- Provide immigration advice and/or services free of charge (and)
- The immigration advice and/or services is provided to an employee or prospective employee

AND

The employee or prospective employee must:

- Be subject to an application for a work permit submitted by the prospective employer, or
- Has been granted a work permit entitling them to work with the employer

Statutory Instrument 2001 No. 1403 (Educational Institutions and Health Sector Bodies) (As Amended)

This is also known as the ‘exemption of educational institutions’ and the ‘exemption of health sector bodies’. You are exempt from registering with the OISC if you are:

- A specific educational institution, or a person employed by or acting on behalf of such a body together with their respective student unions described in Schedule 2 of the Statutory Instrument
- A specific health sector body, or a person employed by or acting on behalf of such a body as described in Schedule 3 of the Statutory Instrument

The exempted persons or entities listed above are however still required to comply with the Commissioner’s Code of Standards.

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