



Principle-based regulation

Impact assessment

March 2024

Contents

Introduction

Summary of potential impacts

Detailed impact of our proposals

When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?

Analysis of our proposals against our Regulatory Objectives and Better Regulation Principles

Conclusion

Introduction

1. This impact assessment explores the potential impacts, both positive and negative, of the proposals in our Code of Standards consultation. It should be read together with our consultation.
2. Our proposals are designed to make sure that our regulated advisers continue to meet the high standards we and the public expect. We propose to introduce a revised Code of Standards that is premised on Principles that are underpinned by Codes.
3. We have undertaken internal and external informal and formal consultations and spoken to stakeholders about our proposed changes. We have analysed potential impacts on:
 - the OISC
 - our regulated advisers
 - advice seekers
 - the legal services market
4. We have also analysed our proposals against our regulatory objectives of:
 - promoting good practice to immigration advisers;
 - set standards for immigration advice and services and;
 - make sure those standards are upheld.
5. Where we have identified potential risks, we have set out how we will manage these.
7. We have used this consultation and ongoing engagement to further explore the impact of our policy proposals.

Summary of potential impacts

8. Our initial analysis has highlighted that:
 - overall, our proposals should have the positive effect of encouraging high, professional standards in the provision of immigration advice and services, and enhancing advice seeker protections, particularly for vulnerable advice seekers.
 - our proposals are unlikely to have a negative impact on those who are already meeting the high standards we expect and are already complying with the existing Code of Standards. We will provide additional support for those who may struggle with interpreting and applying the new Code.
 - we are proposing to take a principle-based approach; that is to set out the core principles which regulated bodies should adhere to and provide a degree of flexibility as to how these are met. This approach allows for variation and adaptability, while still setting out the core standards that must be met to maintain a professional, fully-competent sector which provides an excellent service to the advice seeker. Whereas advisers now have detailed instructions to guide them in their actions, under the principle-based

approach they will be allowed to decide for themselves and make considered decisions on how best to translate the principles into a successful client outcome. To ensure consistency in interpretation and application of the Code, detailed guidance will accompany the new Code.

- Where there are cost implications for the regulated community in ensuring compliance with the new Code, we hope these will be mitigated by the availability of detailed guidance and support from the OISC.
- there may be cultural change difficulties in the short-run that will arise with the new regulatory style, but we hope these will be mitigated by advice and guidance.
- there is no evidence at this stage to suggest that our proposal to change the way we regulate and introduce principle-based regulation will materially affect the numbers who successfully apply for registration and therefore the supply of advisers.
- it is possible that our new requirements may have a greater impact on smaller organisations such as sole practitioners, due to advisers in these settings having less ability to consult with other advisers. A six-month delay from publication of the new Codes to implementation should provide small business the opportunity to raise queries directly with the OISC and guidance will continue to be updated to reflect any common areas of concern.

Detailed impact of our proposals

Revised Code of Standards

10. We have updated the Code of Standards to ensure that our regulatory regime focuses on what really matters – high, professional standards and protection of clients - taking into account the nature and size of the firm, their particular circumstances and crucially the needs of their particular client. For example, the new Code requires advisers to follow what is written in the Principle and adhere to its intention, abiding by the ‘spirit’ of the Principle. We have included clear obligations within the underlying Codes that should be met to demonstrate overall compliance with the Principle.
11. The revised Code will help advisers understand the standards they are expected to demonstrate on an ongoing basis. The new requirements in the Code of Standards are not intended to make it harder for advisers to meet the required standards, simply to provide clarity about the standards we expect. We will make sure that adequate guidance is available to enable advisers to comply with the Codes and adhere to the Principles. We do not expect that the new Code will have any significant impact on the numbers of advisers who fall below the required standards. It is right that standards are up-to-date and provide proper protection for advice seekers.
12. We obtained views from regulated advisers and other stakeholders in drafting the revised Code of Standards. We have used the consultation responses and ongoing stakeholder engagement to make appropriate changes to the draft Code to ensure that it is robust and fit for purpose.

- 13 There is a risk that introducing the revised Code of Standards could result in a lack of clarity or certainty as to what advisers must do to comply. If this happened, the industry would not have the comfort of knowing where it stands because the meaning of the Principles within the Code is not sufficiently certain. Enforcing a rule that specifies an outcome (but not the manner in which that outcome should be achieved) is dependent on reaching a fair and objective measure as to whether or not a firm has achieved a particular outcome.
14. The Principles in the revised Code of Standards will be underpinned by specified Codes that will help to demonstrate how a Principle may be adhered to. The Code of Standards will be accompanied by significant guidance which will provide practical examples or case studies to help illustrate ways in which advisers are likely to meet our requirements.
15. It is our intention is to work closely with all stakeholders, particularly regulated organisations and advisers to ensure that the Principles have higher congruence with their purpose and are achieving the outcomes intended. This will be kept under review.
16. There is a risk that some organisations may find the Principle-based approach less reassuring than the prescriptive approach of the previous more prescriptive Code of Standards. This may be particularly challenging for advisers who work in a more isolated fashion. Guidance and advice will be available for advisers who are uncertain particularly within the first year of the launch of the new Code of Standards.
- 17 We believe that the flexibility afforded by the new Code of Standard is likely to decrease rather than increase any administrative burden on regulated organisations, who may be able to operate in a fashion which better suits their particular business model or clients.
18. There is a risk that the revised Code could lead to an increase in non-compliance with the Code. The new Code will enable the OISC to police the spirit of the Principles as well as the letter, avoiding creative compliance and the need for the Code to anticipate every possible situation. It will also enable us to take targeted and proportionate action against those advisers who fall short of the required standards. Flexibility in how compliance can be demonstrated, should reduce rather than increase the likelihood of non-compliance. The extent of compliance and non-compliance with the new Code will be considered as part of review of the new Codes carried out by December 2025.
- 19 The potential costs for both the OISC and regulated organisations in introducing this new system of regulation e.g., cultural change difficulties are likely to arise with the new regulatory style and therefore there may be a need for training for those who will be applying or enforcing the new Code. We consider that the costs will be outweighed by the benefits of the new regulatory style in the long run as the flexibility afforded by the new Code of Standard will enable improvement of services through innovation and increased client satisfaction. For consumers, principle-based regulation will be of benefit by facilitating a more innovative and competitive immigration advice sector and the delivery of improved services.

20. The above measures will mitigate against the risk that our revised Code is likely to have on the industry in its application and enforcement.

21. We will continue to explore potential impacts with stakeholder after the new Code of Standards is published and in its early years in operation through our ongoing engagement with regulated advisers and the sector.

When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?

22. The review will be carried out before December 2025 and will seek to see how effective the policy has been and if it has achieved the policy objectives that it was designed for.

23. It is primarily designed to check if the policy objective has been met but will also cover how it performed (ease of operation, effectiveness, any difficulties, how problems were overcome etc.).

Success criteria:

24. There will be an increase in the substantive compliance with the Code and the policy will be considered a success if there are few breaches by advisers of the Principles.

Analysis of our proposals against our Regulatory Objectives

Regulatory Objective	Impact
Promoting good practice to immigration advisers	All of our proposals are intended to promote good practice by making sure that regulated advisers meet the standards we and the public expect. They will enable us to take targeted and proportionate action against those advisers who fall short of the required standards. They will increase consumer confidence in the regulatory system, and the protection of advice seekers.
Set standards for immigration advice and services	The Principles in the new Code will lead to a greater degree of substantive compliance with the purpose of the Principle, rather than a “box-ticking” approach, as they will require advisers to think through how to comply. The new Code will offer flexibility for regulated firms and the OISC in determining compliance with the requirements.

	The new Code will help enhance responsiveness of adviser regulation to market innovation and other developments, increasing the durability of the Code and reducing the need for constant amendment.
Make sure those standards are upheld	The new Code will enable the OISC to police the spirit of the Principles as well as the letter, avoiding creative compliance and the need for the Code to anticipate every possible situation.

Conclusion

25. We believe that the introduction of a new 2024 Code of Standards premised on principle-based regulation should have the positive effect of encouraging high, professional standards in advice giving, and protection of advice seekers. Any negative impact it may have on regulated organisations and advice seekers will be mitigated by the additional support and guidance that will be provided by the OISC.

26. We have concluded that the changes could result in a risk to compliance with the requirements. However, we think these risks are low and we have measures in place to mitigate these risks. Furthermore, we believe that the risks are outweighed by the benefits to the regulatory scheme. Our assessment of the proposal to introduce the new Code against our regulatory objectives has concluded that there is clear regulatory justification for the introduction of the new requirements.

27. We will continue to explore any potential impact through the implementation period and after.