



Exemption

Application Notes

Office of the Immigration Services Commissioner



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What is 'immigration advice or services'?

The Immigration & Asylum Act 1999, as amended, defines 'immigration advice' as advice relating to a particular individual given in connection with one or more 'relevant matters' by a person who knows that he is giving such advice. This does not include advice given in connection with representing an individual before a court in criminal proceedings or matters ancillary to criminal proceedings.

'Relevant matters' are defined as follows:

- (a) a claim for asylum;
- (b) (i) an application for, or for the variation of, entry clearance or leave to enter or remain in the United Kingdom;
- (b) (ii) an application for an immigration employment document;
- (c) unlawful entry into the United Kingdom;
- (d) nationality and citizenship under the law of the United Kingdom;
- (e) citizenship of the European Union;
- (f) admission to member states under community law;
- (g) residence in a member state in accordance with rights conferred by or under community law;
- (h) removal or deportation from the United Kingdom;
- (i) an application for bail under the Immigration Act or under the Special Immigration Appeals Commission Act 1997;
- (j) an appeal against, or an application for judicial review in relation to, any decision taken in connection with a matter referred to in paragraphs (a) to (i).

The Act defines 'immigration services' as the making of representations on behalf of a particular individual either:

- (a) in civil proceedings before a court, tribunal or adjudicator in the United Kingdom, or
- (b) in correspondence with a Minister of the Crown or government department,

in connection with one or more relevant matters.

These activities are regulated when provided in the course of business, whether or not for profit. This includes occasional help offered to members of your community. Organisations that undertake these activities as an ancillary service to their main business (for example, colleges assisting students to apply for visas) still need to be regulated by the Office of the Immigration Services Commissioner (OISC).

Please note: 'second tier advice' (i.e. advice given by one advice service to another) is excluded from these definitions, as is signposting of clients to other advisers and the general provision of information about the immigration system, e.g. via leaflets or websites, where there is no relationship with a particular client.

If you provide second tier advice only, then you DO NOT need to apply for registration or exemption with the Commissioner.

Do I need to apply? And who is a 'qualified' person?

If you wish to provide immigration advice or services, you must apply for registration or exemption with the OISC unless you are a 'qualified person'. **Most voluntary and community organisations and most businesses that offer immigration advice or services need to apply to the OISC for registration or exemption.**

Since 30th April 2001, it has been an offence to provide immigration advice or services without being a 'qualified person'.

Section 84 (1) of the Immigration & Asylum Act 1999 ('the Act') prohibits the provision of immigration advice or services other than by a 'qualified person'.

Section 84 (2) of the Act states that a person is a 'qualified person' if he or she is:

- (a) a registered person;
- (b) authorised by a designated professional body to practise as a member of the profession whose members that body regulates;
- (c) the equivalent in a European Economic Area (EEA) state of:
 - (i) a registered person, or
 - (ii) a person within paragraph (b);
- (d) a person permitted, by virtue of exemption from a prohibition, to provide EEA state advice or services equivalent to immigration advice or services;
- (e) acting on behalf of, or under the supervision of, a person within any of paragraphs (a) to (d) (whether or not under a contract of employment).

In addition, the prohibition in section 84 (1) does not apply to persons falling under section 84 (4) of the Act, who have been certified as exempt by the Commissioner or are a category of person eligible to provide immigration advice and services by Order of the Secretary of State.

Unless any of the above applies to you, you will have to apply to the OISC for regulation if you wish to provide immigration advice or services either by registration or exemption.

The designated professional bodies referred to in subsection (b) are the Law Society of England and Wales, the Law Society of Scotland, the Law Society of Northern Ireland, the General Council of the Bar, the Faculty of Advocates, the Bar Council of Northern Ireland and the Institute of Legal Executives.

Please note that the running of an immigration advice service where work is checked by a solicitor or barrister is not sufficient to satisfy subsection (b). The professional body itself must regulate the work. Further, solicitors or barristers assisting unregulated advisers to practise in this way may be acting in breach of Law Society or Bar Council Rules.

If you need any further help or clarification, please contact us on 0845 000 0046 or email: info@oisc.gov.uk

Should I apply for registration or for exemption?

Anyone wishing to provide immigration advice or services who is not a qualified person, as defined under section 84 (2) of the Act or 84 (4) of the Act, must apply to the Commissioner for registration or exemption.

Put simply, if you will charge a fee for immigration advice or services, you need to apply for registration.

If you work or volunteer for an organisation that will not charge a fee for immigration advice or services, then you need to apply for exemption.

Please note that the Commissioner considers membership fees and obligatory donations to be a fee and an organisation must apply for registration if it intends to take such fees for immigration advice and services.

To apply for exemption, you must fall within the Commissioner's requirements for those eligible for exemption. The Commissioner's policy on exemption states that normally, in order to qualify as an exempt person, you should work or volunteer for an organisation that is:

1. (a) a registered, exempted or excepted charity as defined by the Charities Act 1993; or
- (b) run as a trust governed by a Board of Trustees; or
- (c) a voluntary organisation operating under a scheme of management or similar;

and

2. (a) should operate on a not-for-profit basis and on the basis that the client is not asked for payment for the immigration advice or services provided, except where and to the extent that:
 - (i) an application fee is required by the Home Office, Foreign and Commonwealth Office or the Immigration Appellate Authority; or
 - (ii) a Community Legal Service statutory charge is applied; or
 - (iii) a contribution to the Civil Legal Aid Certificate is required;

and

- (b) in the Commissioner's view be fit and competent, having regard to the provisions of section 83 (5) of the 1999 Act and the Commissioner's Code of Standards under schedule 5, paragraph 3 of the Act.

If your organisation meets the above criteria, you should apply for **exemption**. If your organisation does not meet the above criteria, you should apply for **registration**.

How do I apply for Exemption?

To apply for exemption, you need to do FOUR things:

1. Complete the Exemption Application Form

The first section is called 'Organisation details'. You must provide all the information requested in those pages, including 'Adviser details' and 'Additional information'.

You must then complete Sections A and B, which relate to the Commissioner's Code of Standards. The Code of Standards sets the standards by which you must work if you are exempted by the Commissioner.

To assess your suitability for exemption, the OISC will assess your fitness and competence to provide immigration advice and services. To do this, the OISC takes into account whether you can demonstrate that you will comply with the Code of Standards. Copies of the Code of Standards and the Guidance on Competence are included with this pack. You should study them carefully before making your application.

Sections A and B deal with different parts of the Code of Standards. At each stage, you will be asked to confirm that you have read and understood the relevant Codes on those pages headed Declaration.

You are also required in Section A to provide information and produce documentation to demonstrate you can comply with the Codes. The form makes it clear where you are required to provide information and produce documentation. Guidance for this is provided in the pages headed 'Notes' in the application form. In addition, you are reminded of the need to provide information and produce documentation on the pages headed Declaration.

On page 32 of the Exemption Form you are asked to make further declarations relating to your application.

Please note that we are unlikely to approve and application from a person who has an unspent conviction under section 91 or 92(b) of the 1999 Immigration and Asylum Act (as amended), or if a fine relating to the conviction is not yet discharged.

An application from a person who has been convicted under section 25 or 26 of the 1971 Immigration Act cannot be approved.

2. Complete and include the Codes and Rules Assessment

All applicants must complete the OISC's Codes and Rules Assessment before submitting their application.

This is an online assessment that can be accessed through the assessment area of our website: www.oisc.gov.uk.

The assessment tests your understanding of the Code of Standards and the Commissioner's Rules. The assessment consists of 10 questions, all of which must be completed correctly. The assessment is not timed, and can be taken more than once.

Everyone in your organisation who is to be listed as an adviser in your application must complete and submit a successful Codes and Rules Assessment. When each adviser has successfully answered all 10 questions, he or she must ensure that it has been successfully submitted electronically via the OISC website.

There may be some questions relating to financial matters in the assessment or questions relating specifically to registered advisers.

As an exempted organisation, you may feel that these may not be directly related to you. However, we expect all advisers should be able to demonstrate a broad knowledge of the OISC's Codes and Rules in order to promote best practice.

Please ensure you tick the non-profit box on the assessment as exempted organisations are not bound by the Commissioner's Rules.

3. Check you have a complete application

On page 33 of the Exemption Application Form you will find an Application check list. When you feel you have completed this application form, provided all information required and produced all the documentation required, you should check your application against that check list. If your application is fully complete, it is ready to be submitted to the OISC. Upon receipt of a complete application, we will assign a caseworker to assess your suitability for exemption.

Please DO NOT submit your application if it is not complete – incomplete applications will not be passed to a caseworker.

We will write to you telling you what information and/or documentation you did not provide, and you will have 28 calendar days to provide it. If you fail to provide it after the period has elapsed, we will write to you again and you will have a further 14 calendar days to provide the information and/or documentation. If at the end of the latter 14-day period you have still not provided the information and/or documentation, your application for exemption will be **refused**.

Your application for exemption will be refused because, in failing to submit required information or documentation, you will have failed to demonstrate that you can comply with the relevant Codes, and, as explained, the OISC cannot be satisfied that you are fit and competent to provide immigration advice and services. We can only grant exemption to people if they can demonstrate that they are fit and competent.

Please note that refusal of an exempted application does not carry an appeal right, and you will not be able to challenge the Commissioner's decision at the Immigration Services Tribunal. However, you are able to submit a fresh application to the Commissioner at any time.

4. Submit your application

Completed application forms should be submitted to the OISC at the following address:

Central Services
The Office of the Immigration Services
Commissioner
5th Floor
Counting House
53 Tooley Street
London
SE1 2QN

What happens when I have submitted my application?

Once you have submitted all the required documentation, a caseworker will be assigned to consider your application.

The information you have submitted will be assessed for compliance with the Code of Standards.

You will be invited to sit a level 1 online competence assessment as part of your overall assessment of competence. You may also be asked to sit an assessment at levels 2 and 3 (please note this only applies to applicants wishing to work at level 2 or 3). See below for information on assessments.

The principles that will be applied in deciding applications for exemption are set out in section 83 (5) of the Act. That is, that applicants must demonstrate that they are fit and competent to provide immigration advice and immigration services. Relevant to the assessment of fitness and competence is compliance with the Code of Standards.

Copies of the Code of Standards and the Commissioner's Guidance on Competence are included with this application pack. You can obtain further copies from the OISC website at www.oisc.gov.uk or by calling **0845 000 0046**.

Competence assessment

All those listed as advisers in the application will not be able to access the level 1 assessment until they have completed the Codes and Rules assessment and submitted a completed application form.

The OISC competence assessments

Level 1 assessment

- All those listed as advisers in the application will be invited to sit the assessment.
- The OISC will send a letter inviting applicants to complete the assessment within a 28-day window.
- It is an online assessment that can be accessed through the assessment area on our website: **www.oisc.gov.uk**.
- The assessment tests the applicant's understanding of the Immigration Rules.
- The assessment consists of 30 multiple-choice questions.
- Applicants are given one hour to complete the assessment.
- Once applicants have completed the assessment, they will receive instant automated feedback if they have entered an email address. Otherwise, if applicants do not enter an email address, written feedback will be sent by the caseworker within 20 working days.
- Your caseworker may provide more detailed feedback, if necessary, and identify any training needs you may have.

Level 2 or 3 assessment

(This only applies to applicants wishing to work at level 2 or 3)

- Once an applicant has demonstrated competence in all areas covered by level 1 assessment, they will be invited to complete the level 2 or 3 assessment.
- The assessment is a written scenario-based assessment and is usually completed at the OISC's offices. The level 2 assessments take an hour and a half and the level 3 assessments take two hours.

- Your caseworker will mark the assessment and provide detailed feedback (where necessary) within 20 working days. They will also identify any training needs you may have.

Please note that if you have applied to provide advice and services at level 2 or 3 but do not demonstrate competence at level 1 in all categories, you are unlikely to be permitted to take the level 2/3 assessments.

Legal Services Commission (LSC) accreditation

Prospective advisers who have successfully completed LSC (Legal Services Commission) accreditations are not required to sit the corresponding level OISC competence assessment as detailed below:

- LSC Level 1 Accredited Caseworker > OISC Level 1 Assessment
- LSC Level 1 Accredited Caseworker > OISC Level 2 Assessment
- LSC Level 2 Senior Caseworker > OISC Level 3 Assessment

For OISC exemption at levels 1 & 2, the minimum requirement is LSC Accredited Caseworker. For level 3, it is LSC Senior Caseworker.

The relevant certificate must be enclosed with your application for exemption.

Please ensure that one certificate for each accredited adviser is submitted – i.e. if only one applicant has LSC accreditation, the others need to sit the OISC assessment.

What qualifications am I expected to have?

You will need to satisfy the OISC that you have the knowledge and skills to practise competently at the level at which you have applied.

You do not need any specific qualification to apply for exemption. However, your competence and fitness will be thoroughly assessed before you are approved.

You will need to satisfy the OISC that you have the resources, management structures and procedures needed to run the organisation in accordance with the Commissioner's Code of Standards.

What if I have no previous experience of immigration work?

It may be difficult for you to demonstrate that you have the requisite knowledge and skills if you have no previous training or experience in immigration law and practice, especially at levels 2 and 3.

Even if you demonstrate high levels of knowledge in the competence assessment, we may still ask that you attend additional training to improve your skills and abilities before admitting you to the OISC scheme.

Will the OISC train me to become an immigration adviser?

No. The OISC will not train you to become an immigration adviser.

The OISC has some limited funds available for the training and development of immigration advisers in the voluntary sector. These are used to fund courses for advisers who are already exempted or applying to be exempted by the Commissioner (i.e. those who do not charge a fee to their clients), to help them keep up-to-date and develop their knowledge and skills.

Once you have completed the level 1 online assessment, you may be able to access free training in immigration law provided by the OISC. The OISC has published a booklet called Support and Training for OISC Regulation, which gives details of other training providers. The costs of training courses and of other resources, such as books and journals, should be included in any application you make to a grant-making body to fund your immigration advice service.

Can I provide immigration advice and services while my application is being assessed?

No. You cannot provide immigration advice and services until the Commissioner has approved your application.

While your application is being considered, you are not regulated and are not permitted to provide immigration advice or services.

If we become aware that you are practising illegally, i.e. without authorisation, this could affect our decision as to whether or not we approve your application.

It is a criminal offence, punishable by fine and/or imprisonment, for anyone to provide, or offer to provide, immigration advice and services without being approved to do so by the Commissioner (or other body, as defined in Section 82 (2) of the Act.

To offer to provide immigration advice and services (i.e. advertising) before the Commissioner has approved your application is also a criminal offence.

How do I become competent if I cannot practice until I am exempted?

The Immigration & Asylum Act 1999 allows for people to gain experience of immigration advice without being exempted if they are employed by, or supervised by, another adviser who is OISC registered or exempted.

The organisation must inform the OISC of your supervisory arrangements and you must also provide the name of any adviser you wish to supervise.

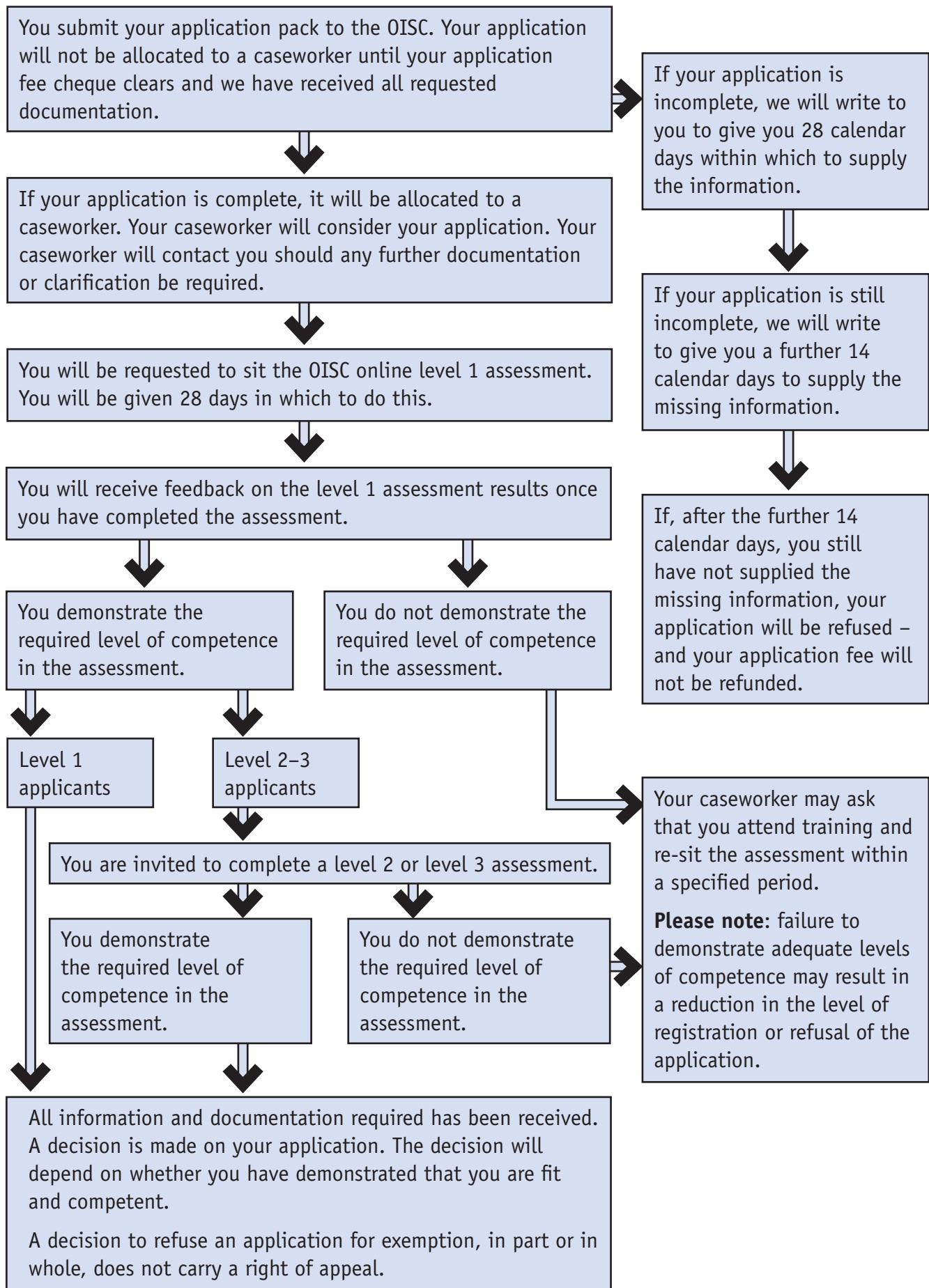
A person could also give immigration advice while employed by (and supervised by) a member of a designated professional body, such as a practising solicitor.

Business names and the use of titles

The Scottish Law Society states that, in order to prevent clients being misled, it will not allow non-solicitors operating in Scotland to use either the words “law” or “legal” in their organisations’ titles and will take action to enforce this rule. This is in line with the OISC’s Code 76. Similar rules apply in England and Wales. Advisers wanting more information on this should contact the Business Names Section at Companies House or, for charities, from the Charity Commission.

Further, unless entitled, advisers should not use titles like professor, doctor, commissioner of oaths or notary public. An adviser who incorrectly indicates that they have certain qualifications runs the risk of the OISC determining that they are doing this in order deliberately to mislead potential clients.

The application process



Applying for the correct level

When completing the application form you should consider both the levels (complexity of work to be undertaken) and categories of advice (areas of knowledge) that you wish to work at.

Details of the work covered at each level and category can be found in the Guidance on Competence issued by the Commissioner. A copy is enclosed with this application info. Further copies can be obtained from our website at www.oisc.gov.uk.

The levels are summarised as follows:

- Level 1: Basic immigration advice within the Immigration Rules;
- Level 2: More complex casework, including applications outside the Immigration Rules;
- Level 3: Appeals.

You should apply for registration at the level that reflects your competence and service. If you are uncertain as to what is appropriate for you, please read the Guidance on Competence.

What if I want to provide immigration advice at level 1 in some categories and at level 2/3 in another?

If you wish to operate at different levels for categories of advice, you should complete the competence statement and indicate the highest level you wish to work at in each category.

You can apply to move up levels in the future, but will have to submit a new application and Competence Statements.

Is my exemption transferable to another organisation?

Your exemption with the Commissioner is not transferable to another organisation.

You can apply for exemption or registration with another organisation, but you must submit a Competence Statement through the additional organisation.

You must wait to be approved by the Commissioner to provide immigration advice and services for each organisation you work for.

Is additional guidance and support available?

The OISC runs application support seminars, which are open to advisers who are working through the application process. Should you require any assistance with the completion of your application or you wish to book a place on one of the seminars, please contact us on **application.support@oisc.gov.uk** or on **0845 000 0046**.

OISC caseworkers will assist you through the application process once you have submitted your completed application.

Online application tracking

You can track the progress of your application online.

Visit the information section of our website and go to Application Stage Tracking.

Enter your application exemption number (this can be found on all correspondence from the OISC once you have submitted an application).

Data protection

The Commissioner is a data controller in relation to the information received by her for the purposes of her functions under the Immigration & Asylum Act 1999.

The OISC is registered with the Information Commissioner under the terms of the Data Protection Act 1998.

The Commissioner has regard to section 93 of the Immigration & Asylum Act 1999, which, among other things, prohibits the disclosure of information received by the Commissioner except with lawful authority, including where disclosure is necessary in the public interest.

The Commissioner might, for example, take the view that, in all the circumstances of a case, disclosure to an elected representative, e.g. an MP, is necessary in the public interest.

Organisation and contact details may be used by the OISC and its agents to contact advisers about OISC related matters.

Information held by the OISC is not passed to others for marketing or similar purposes.

The OISC publishes details relating to successfully registered or exempted organisations on the OISC website. These include a contact name and the names of all advisers at each organisation. If you do not wish such personal details to appear on the website, please advise us in writing as soon as possible.

Occasionally, we seek views on our products and services in order to improve our processes. We may contact you in the future to ask about your experiences or to obtain your views on some of the services we are considering introducing.

If you've understood everything so far, you are now ready to complete the Exemption Application Form

Go through each section, providing as much detail as possible and completing the tick boxes where appropriate.

Some sections will ask you to explain how you will achieve the standard or to produce a document or examples.

It is essential that you give us as much detail as possible about your organisation so that the caseworker assessing your application gains an understanding of the way your organisation will operate. This will reduce the time your application will take to process.

The answers, examples and documentation you provide must be an accurate reflection of the way you intend to work.

New or small organisations may not have highly detailed procedures and policies in place as yet. In these instances, what we are looking for are outlines of how the organisation is structured and basic policies that may need to be developed as the organisation matures.

You must sign each **Declaration** on each page.

June 2008

