



Revising the OISC's Guidance on Competence Consultation Paper

November 2009



REVISING THE OISC'S GUIDANCE ON COMPETENCE

Introduction

Future OISC Regulation

1. This consultation document is about proposed changes to the OISC's Guidance on Competence.
2. The changes to the levels and categories set out in this consultation will enable advisers to better assist their clients across a range of subjects. They may be able, if they so chose, to offer a seamless service assisting a client from their initial approach through to their last appeal. Clients will be better able to judge if the work an adviser is authorised to provide will meet their needs.
3. Given that the proposed changes are designed to bring the Guidance up to date and make it fit for purpose for some time to come, it is appropriate to consider it alongside how the regulatory system itself may change in the years to come.
4. The OISC is considering changing the way it regulates immigration advisers. Within the next year, we are likely to expect new organisations, new advisers applying to work at regulated organisations and those regulated advisers who wish to increase their areas of authorisation, to have undertaken checks and assessment which will confirm their fitness and competence *prior* to making their application to the OISC.
5. This will mean that new applicants will know the results of these checks and assessments before they apply to the OISC and will be able to decide if they want to proceed at that time. The OISC will, when assessing applications, ensure that the information provided is validated and focus on the applicants' ability to run their business in the best interests of clients. The application process should be quicker.
6. Becoming an OISC regulated adviser or being permitted to operate at a higher level of different category will accordingly become more challenging.
7. The demonstration of competence will be widened to include skills as well as knowledge. How this could look is detailed within this document. The process for the assessment of competence will change; it may be carried out by organisations independent of the OISC, either in full or in part and there may be a financial cost for these independent assessments.
8. Similarly, to provide greater assurance that advisers are 'fit' to deal with clients, many of whom may be vulnerable, we will expect applicants to be fully open about any criminal convictions they have by obtaining a Criminal Record Bureau disclosure check, again prior to making a full application.
9. The OISC will work to be transparent and will develop and expand our published standards so that they are unambiguous and enable applicants to clearly see what will be expected of them. These standards will include details and examples of the organisational policies and procedures that organisations will be expected to have in place before they apply to the OISC.

10. For those already authorised to operate by the OISC, we intend, to decrease the paperwork required at the continued registration stage for organisations seeking no additions to their existing authorisation. We will still expect organisations to be fully compliant with the Commissioner's Rules and Code of Standards. We will however, reserve the right to inspect specific documents at any time. This should speed up both the application and the decision making process.
11. We are also exploring the use of on-line technology for applications, which would further increase accessibility and accelerate the application process.
12. We would anticipate increasing the number of premises audits we carry out, auditing more regulated organisations as well as more applicants, focusing our resources on work that will best protect the clients
13. We believe that these changes will modernise the way the OISC regulates so that it better fits with a maturing but dynamic sector.

Proposed Changes to Guidance on Competence EXECUTIVE SUMMARY

1. The Immigration Services Commissioner has a duty to ensure that those who provide immigration advice or immigration services in the UK are fit and competent to do so. The *OISC's Guidance on Competence* (current edition, July 2008) sets out the standards that advisers must meet in terms of necessary skills and knowledge.
2. Advisers must not operate beyond their authorised level of competence or outside their authorised category. If they do they will be in breach of the *Code of Standards* (Codes 6; 17; 18; 24-28; 59; 72; 74), and regulatory or criminal action may be taken against them.
3. The 2008 edition of the *Guidance on Competence* made some cosmetic changes to the May 2005 edition of the document, such as replacing IND with UK Border Agency (UKBA) and the IAA with the Asylum and Immigration Tribunal (AIT).
4. The last few years have seen the introduction of the Points-Based System (PBS), a change that the UKBA has described as, "the biggest shake up of the immigration system for 45 years". Other important developments have included the passage of the Borders, Citizenship and Immigration Act 2009, the continuing expansion of the European Economic Area (EEA), the recent Earning The Right To Stay consultation and proposed changes to the immigration and asylum tribunal system.
5. Considering this, the OISC believes that the time is right to consider whether fundamental changes need to be made to its *Guidance on Competence*. Alongside reviewing the competence requirements we have been mindful of the ways in which the application process may alter.
6. The OISC is not statutorily required to undertake a consultation exercise when amending the *Guidance on Competence*. We believe, however, that it is best practice to do so, and we hope that by doing so we will receive the views and opinions of our stakeholders.
7. This document seeks views on how the principles established in the current *Guidance on Competence* should be taken forward. Our intention is to simplify the document, provide greater clarity on what work advisers may be regulated to undertake at any level or category, the limits on each as well as the skills and competences that are required in respect of them. No decisions have yet been made, but rather, we are exploring possible options. We want those that may be affected by the process to have the chance to fully participate in it. All changes will depend on the results of this consultation and budgetary constraints.

**CHAPTER 1
CONTEXT**

Immigration and Asylum Act 1999

1. The Immigration and Asylum Act 1999, the Act, states that “ The [Immigration Services] Commissioner must exercise his functions so as to secure, so far as is reasonably practicable, that those who provide immigration advice or immigration services—

- (a) are fit and competent to do so;
- (b) act in the best interests of their clients;
- (c) do not knowingly mislead any court, tribunal or adjudicator in the United Kingdom;
- (d) do not seek to abuse any procedure operating in the United Kingdom in connection with immigration or asylum (including any appellate or other judicial procedure);
- (e) do not advise any person to do something which would amount to such an abuse.

For the purposes of the Act, immigration advice or immigration services are the provision of such advice or services by a person—

- (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) by him or by another person.

Further the advice or services must be in relation to a relevant matter which means any of the following—

- (a) a claim for asylum;
- (b) an application for, or for the variation of, entry clearance or leave to enter or remain in the United Kingdom;
- (ba) 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 Acts or under the [1997 c. 68.] 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)

OISC statutory documents and the meaning of “competence”

2. The *Guidance on Competence* must be read in conjunction with the Immigration Services Commissioner’s other regulatory statutory documents:
 - The Code of Standards
 - The Commissioner’s Rules; and
 - The Complaints Scheme
3. When the OISC uses the term “competence”, it means the skills and knowledge that each regulated adviser must demonstrate in order to show that they are able and proficient to provide good quality advice and services at the advice level and category for which they are authorised to practice.
4. When an organisation applies to become regulated by the OISC it is required to submit a statement of competence for each of the advisers that is or is about to start working in that organisation; demonstrating that they meet the obligatory competence requirements by detailing for example, the number of years experience they have, the professional development they may have undertaken and the access they have to current information on law and procedures. The advisers are required to undergo a written competence assessment appropriate to the level and category of advice they wish to be regulated at.
5. When an organisation currently applies to the OISC for continued registration it is required to submit a statement of competence for each of the advisers that is or is about to start working in that organisation. As stated in the introduction this will change and only re-registrations involving new advisers and those wishing to move up an advice level will need to undergo a written competence assessment appropriate to the level of advice they wish to be regulated at.
6. When auditing organisations, OISC staff examine client files as a means of monitoring the competence of the adviser(s). If they wish to undertake a detailed review a particular adviser’s competence they have access to expert immigration consultants. The *Code of Standards* (Code 23) requires advisers to ensure their continuous professional development (CPD). To that end the Commissioner has introduced a CPD scheme. Caseworkers also check for compliance with the CPD requirements.
7. The OISC divides immigration advice and services into three levels. The competence requirements increase with the complexity of the work and this is indicated as the levels go higher. The levels are:
 - Level 1 – Initial advice
 - Level 2 – Casework
 - Level 3 – Advocacy and representation
8. The OISC has also divided the type of work that is regulated into separate categories. Currently these are:

- Asylum
- Entry clearance, Leave to Enter or Leave to Remain
- Nationality and citizenship
- EU and EEA immigration law
- Detention, applications for temporary admission, Chief Immigration Officer bail, immigration judge bail

CHAPTER 2 CATEGORIES

1. As set out in Chapter 1, the OISC has sub-divided immigration advice and services into five categories (**see Annex A**). These categories are:
 - Asylum
 - Entry clearance, Leave to Enter or Leave to Remain
 - Nationality and citizenship
 - EU and EEA immigration law
 - Detention, applications for temporary admission, CIO bail, immigration judge bail
2. These categories are roughly aligned to the “relevant matters” listed at section 82 of the Act. Given the changes to immigration legislation this may not now be appropriate. It may be, for example, simpler for advisers, clients and the OISC, for us to regulate in fewer categories with the categories better reflecting current immigration applications.
3. Indeed it could be argued, there are now really only two major categories of work Asylum and Managed Migration. Depending on the method of entry, enforcement work (i.e. detention, bail and temporary admission) is integrated into these categories and is not really independent. Similarly nationality and EEA law is now closely linked to managed migration. Changing from five categories to two would continue to provide a clear demarcation between asylum and non-asylum work while taking account of the impact of managed migration and the linkages it has produced.

The options in Annexes B – D set out the categories in more detail.

Question 1: Do you agree that there should only be two main categories of regulated work, Asylum and Managed Migration, and that all of the other categories should be absorbed into them?

CHAPTER 3 OISC LEVELS

What should they cover and what should they be called.

1. As explained in Chapter 1, the OISC currently regulates advice given at three distinct levels and in a number of categories.
A summary of the current levels can be found at **Annex A**.

Level 1 advisers

2. At Level 1 all work within the Immigration Rules is permitted, apart from substantive asylum work and applications involving detailed representations and follow-up correspondence such as:
 - applications for Indefinite Leave to Remain on the grounds of long residence in the UK (14 years' continuous residence)
 - applications for settlement on the grounds of domestic violence
 - applications for further leave to remain/settlement in respect of adopted children
 - applications that are not within the Immigration Rules

No work concerning illegal entrants, overstayers removal or deportation from the UK is permitted at this level. Advisers at this level are not allowed to do any appeals work or represent appellants at the AIT.

3. Given changes to the sector and the work undertaken we have looked in detail at Level 1 particularly in the areas of asylum and nationality.

The Immigration and Asylum Act 1999 defines “immigration advice” as advice which—

- (a) relates to a particular individual;
- (b) is given in connection with one or more relevant matters;
- (c) is given by a person who knows that he is giving it in relation to a particular individual and in connection with one or more relevant matters; and
- (d) is not given in connection with representing an individual before a court in criminal proceedings or matters ancillary to criminal proceedings;

While “immigration services” means the making of representations on behalf of a particular individual—

- (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 ;

“relevant matters” are as set out in Chapter 1.

4. At Level 1 advisers giving assistance in asylum matters can only provide the following:
 - i. Notifying the UKBA of a change of address
 - ii. Applications for an Extension of Temporary Admission
 - iii. Applications for permission to work
 - iv. Travel document applications for someone granted Humanitarian Protection/ Exceptional Leave to Remain
5. All of which come within the definition of immigration services. This enables voluntary sector organisations and others to assist clients in their dealings with UKBA, albeit they are not permitted to apply for asylum or offer advice on asylum applications.
6. Further, the work currently undertaken by various local authorities, accepting, notarising and forwarding applications for British citizenship or nationality to UKBA could be classed as a service. 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 .

7. Given the particularly limited services that can be provided in these specific categories, the OISC thinks that those providing these services should not have to meet all the competence requirements currently required of all Level 1 advisers.
8. Implementing this would enable those organisations, such as the local authorities and community and voluntary sector organisations providing asylum assistance or the National Checking Service, that only provide service/assistance to clients to apply under “Level 1 service and assistance” and for their advisers to be assessed as fit and competent in relation to the provision of Level 1 Services and Assistance rather than Level 1 Advice, Service and Assistance.

Question 2. Do you agree with the proposal to split Level 1 into Service and Assistance and, Advice, Service and Assistance as outlined below?

Service and Assistance	Advice, Service and Assistance
<p>Nationality checking</p> <ul style="list-style-type: none"> • Verifying documents and forwarding nationality applications to UKBA <p>Asylum Assistance and Services</p> <ul style="list-style-type: none"> • Notifying the UKBA of a change of address • Extension of Temporary Admission • Applications for permission to work • Travel document applications for someone granted Humanitarian Protection/ Exceptional Leave to Remain 	<p>Basic applications that are within the Immigration Rules, including immigration employment documents and PBS.</p> <ul style="list-style-type: none"> • No advice on enforcement issues such as Bail • No appeal work

The split between service and advice along with the proposed changes in levels and categories are set out in the options detailed in Annexes B-D.

9. New Advisers applying at Level 1 would need to indicate if they wanted to be regulated for Service and Assistance or Advice, Service and Assistance or both. They would undertake a competence assessment that was relevant to their choice. Advisers wishing to operate across both categories would need to demonstrate competence across the full range of tasks
10. Existing Level 1 applicants would, at their first re-registration after the new levels were introduced, be able to either apply to continue to be regulated in both categories or choose to be regulated in the aspect that was appropriate to their business. There after any new adviser would be competence assessed accordingly.
11. Exempt organisations would be written to and would have 12 months in which to decide how they wanted to proceed.

Level 2 and 3 advisers

12. Level 2 advisers are allowed to undertake more complex applications in all categories as well as applications outside of the Immigration Rules and applications under Home Office concessionary or discretionary policies. In limited circumstances they may lodge Notices of Appeal, but must then refer the case to a Level 3 adviser or a member of a Designated Professional Body (see section 86 of the Act). The following work is permitted at Level 2:
- applications to the UKBA, including asylum and human rights applications and concessionary or discretionary applications
 - Case Resolution/Legacy Cases and Active Review
 - applications for Humanitarian Protection
 - representing clients in correspondence with the UKBA and at UKBA interviews
 - representations to the UKBA in support of cases
 - drafting client statements, including asylum statements
 - submitting One-Stop Notices
 - lodging appeals (only in exceptional circumstances where immediate referral is not possible)
 - applications for temporary admission and Chief Immigration Officer's bail
 - family reunion applications
 - representations regarding ongoing immigration or asylum casework to MPs
 - instructing a barrister or advocate for advice and to draft appropriate grounds of appeal (where permitted by the Bar Council).
13. Level 3 advisers are allowed to undertake all work up to and including representing clients at appeal hearings before Immigration Judges at the AIT. Work permitted at Level 3 includes:
- conduct of specialist casework
 - preparation of cases in the AIT, including drafting full grounds of appeal
 - representing clients before the AIT
 - instructing a barrister or advocate to appear at the AIT (where permitted by the Bar Council).
14. As the areas of discretion exercised by the UKBA have reduced, the work that can be undertaken in terms of Level 2 (discretionary applications, but not advocacy) has similarly diminished in comparison with Level 3. The decline in eligible work available to Level 2 advisers brings into question the relevance of this level and whether the remaining work should be incorporated with the work currently undertaken at the other levels.
15. If Level 2 work was to be incorporated into the other Levels, this would mean that this level would not be available to new applicants or for those currently operating at Level 1 to change up to. Those currently operating at Level 2 would however be able to continue their current work, without doing appeals for 6 months from the introduction of the new levels or their next continued registration, whichever is the later. This would not preclude them from choosing to move to another level earlier should they wish to do so. Exempt organisations will be given up to 6 months from the date of implementation to change.
16. The Commissioner is committed to assisting all advice organisations at Level 2 make the transition to a new level, through support guidance and training if required.

Summaries of the option detailing what advisers would be allowed to do at the different levels and different categories can be found at **Annexes B-D**.

Question 3: Do you agree that Level 2 should be incorporated with the work to be undertaken at new levels?

Question 4: Do you agree that the transition period is appropriate?

What to call the new levels?

17. In the current *Guidance on Competence* the existing levels are summarised as follows:

- Level 1 – Initial advice
- Level 2 – Casework
- Level 3 – Advocacy and representation

18. These descriptions do not, however, necessarily give an adequate summary of what an adviser is allowed to do nor do they necessarily assist clients in identifying who could best assist them.

19. Level 1 advisers are allowed to make applications within the Immigration Rules, which are, in effect, casework. It would be a misnomer to continue to call it Initial Advice, since there is the possibility that this could potentially mislead prospective clients.

20. The next Chapter sets out in detail the various options for changing the levels and categories. The final solution regarding what to call each Level will ultimately depend on the conclusion reached with regards to the number of levels and how they are divided.

21. If there are to be two levels, it is proposed that they should be called:

- Band A – Advice, Service and Assistance
- Band B – Advocacy and Representation

22. If there are still to be three albeit different levels it is proposed that they be called:

- Band A – Advice, Service and Assistance
- Band B - Specialist Representation
- Band C – Advocacy

Question 5: In the event of the number of Levels being reduced to two, do you agree with the proposed descriptions?

Question 5b: In the event of the number of Levels being remaining at three, albeit three different ones, do you agree with the proposed descriptions?

CHAPTER 4 OPTIONS

1. As a result of the implementation of the Tribunals, Courts and Enforcement Act 2007, and the Borders, Citizenship and Immigration Act 2009, the Asylum and Immigration Tribunal (AIT) will be transferred into the unified tribunal structure, possibly as early as October 2010. The Upper Tribunal is a superior court of record, equivalent to the High Court in England or the Court of Session in Scotland. Currently Court Rules do not allow OISC regulated advisers to exercise rights of audience in the Higher Courts. They cannot, for example, appear on behalf of their clients at judicial review applications. There is however nothing, in the new legislation that, in principle, prevents OISC advisers, from appearing before the new Upper Tribunal.
2. Being able to appear before the Upper Tribunal would permit advisers to:
 - Provide a seamless service to their clients
 - Potentially reduce costs to their clients
 - Reduce their own administrative burden arising from having to refer cases on
 - Utilise their skills in advocacy at a higher level
3. While the OISC appreciates the potential opportunities for both clients and advisers, these will only be realised if advisers appearing before the Upper Tribunal are skilled, knowledgeable and well able to act on behalf of their clients. If they are not then the individual clients will suffer, the Tribunal could be burdened with delays and the reputation of all advisers could be damaged.
4. The OISC believes that all advisers appearing at the AIT, any future form of the AIT and the Upper Tribunal must be demonstrably competent and skilled in advocacy.
5. The OISC therefore has had to consider what level of competence be appropriate for this work. It also had to consider if there should be a distinction and separation between work undertaken in front of the lower tribunal (currently the AIT which will be known as the First Tier Tribunal) and the Upper Tribunal bearing in mind that any separation it introduces would obviate the main benefit; the possibility of a seamless service to clients.
6. The OISC also has to consider how any changes would affect those already in the regulatory scheme and appearing at the AIT (current Level 3 advisers) as well as new entrants.
7. In considering which option is most appropriate, the OISC believes that advocacy must be assessed. How long advisers will be given to make the transition to be fully competence assessed in advocacy and the processes for would need to be fully determined.
8. The OISC considers that there are four main options:

Option i. Do nothing other than merge the existing Level 2 into the other two levels **(Annex B)**

 - All representation before the tribunals would be classed as being in the new highest level.
 - There would be no distinction made between appear at AIT and the Upper Tribunal.

- All advisers currently allowed to appear at the AIT/First Tier Tribunal would continue to do so and in addition would be permitted to appear at the Upper Tribunal, once it is established with out further competence assessment
- All new advisers authorised to operate at the new higher level would be able to represent clients in the Upper Tribunal as well as the First Tier Tribunal but would be subject to any new competence assessment arrangements.
- This would have a low administrative impact on the OISC and on advisers.
- It could be prejudicial to the Tribunal system and to clients given the lack of experience that most regulated advisers would have in presenting cases akin to Judicial Reviews.
- Any problems arising from the lack of competence of advisers could result in changes being made to the legislation, restricting access to the Tribunals, which could even affect access to the First Tier (AIT).
- The OISC does not regard this as a viable option due to the lack of competence assessment and protection to the client.

Option ii. Having merged the existing Level 2 into the other two levels there will be two new bands. All Advocacy work is within the higher band. All advisers over time will be assessed in Advocacy. (**Annex B**).

- This would require a phased implementation.
- All those regulated at the higher level will be competence assessed on advocacy
- All new advisers at this level would need to pass a competence assessment that included an advocacy component.
- All current Level 3 advisers would be able to continue to undertake work at First Tier (AIT) without further assessment for 6 months. They would not be permitted to appear before the Upper Tribunal.
- There after in order to appear before the First Tier or Upper Tribunal, existing advisers would need to pass the advocacy component of the competence assessment
- Existing Level 3 advisers who wished to sit the advocacy component within the 6 months would be able to do so and on passing the assessment would be permitted to appear in the Upper Tribunal.
- Should a fee be introduced for the advocacy element then existing Level 3 advisers would not be charged for their first application.
- This option would have the greatest administrative burden on the OISC and on Advisers who want to appear before the First Tier and the upper tribunal.
- It would however ensure that all advisers representing clients before the Tribunals were competent to do so from a skills as well as a knowledge position.
- This option provides the greatest protection to clients and the prospect of a seamless service to clients with a regulated adviser being able to take their case from beginning to end.
- It also provides the opportunity for all advisers to be eligible to appear at both tribunals.

Option iii. Having merged the existing Level 2 into the other two levels into two new bands, introducing a Specialist level within the new higher band. (**Annex C**)

- This could also require a phased introduction.

- The higher band would be subdivided into advocacy and representation
- Only those advisers regulated in the advocacy specialist subdivision would be permitted to appear before the Tribunals
- Only those that wished to undertake advocacy would be further assessed
- The division could:
 - A) include all Tribunal work
 - B) include only Upper Tribunal work with work relating to the First tier (AIT) being in the representation category.
- All new advisers wanting to be authorised to undertake advocacy work would need to pass a competence assessment that included an advocacy test.
- All current Level 3 advisers would be able to continue to undertake all the representation category of work without further assessment. This could include First tier work if the advocacy subdivision only included the Upper Tribunal
- If the subdivision included all Tribunal work all current Level 3 advisers would be able to continue to undertake work at First Tier (AIT) without further assessment for 6 months. They would not be permitted to appear in the Upper Tribunal.
- There after in order to appear before either Upper Tribunal existing advisers would need to pass the advocacy element of the competence assessment
- Existing Level 3 advisers who wished to sit the advocacy element within the 6 months would be able to do so and on passing would be permitted to appear before the Upper Tribunal.
- Should a fee be introduced for the advocacy element then existing Level 3 advisers would not be charged for their first application.
- This would provide the same degree of protection to the clients and Tribunal system as Option 2 if the subdivision included all Tribunal work.
- If the subdivision included only the upper Tribunal the level of protection would be reduced.
- Clients may find that they had to change adviser as their case progressed.
- The OISC may need to introduce two separate assessments for advocacy work depending on the subdivision.
- The number of existing Level 3 advisers having to be reassessed could be reduced since some may only wish to undertake representation work.

Option iv. Having merged the existing Level 2 into the other two levels divide the range of work into three new bands with representation and advocacy completely separated. (**Annexe D**).

- Advocacy would effectively become a new higher category.
- Only those authorised at the advocacy level would be able to appear before either tribunal.
- Existing advisers at level 3 would be able to undertake all work in the Specialist Representation category without further authorisation or testing.
- All new applicants for authorisation at the Advocacy band would need to have their competence in advocacy assessed.

- All current Level 3 advisers would be able to continue to undertake work at First Tier (AIT) without further assessment for 6 months. They would not be permitted to appear in the Upper Tribunal.
- There after in order to appear before either Tribunal existing advisers would need to pass the advocacy element of the competence assessment.
- Existing Level 3 advisers who wished to sit the advocacy element within the 6 months would be able to do so and on passing would be permitted to appear before the Upper Tribunal.
- Should a fee be introduced for the advocacy element then existing Level 3 advisers would not be charged for their first application.
- This would provide the same degree of protection to the clients and Tribunal system as Option 2.
- More clients may however find that they had to change adviser as their case progressed.
- The OISC would still need to introduce an assessment of advocacy.
- The number of existing Level 3 advisers having to be reassessed could be reduced since some may only wish to undertake representation work.
- Current Level 3 advisers who do not wish to undertake advocacy and who therefore would operate at the new middle band may be concerned about how their clients would view the change.
- The introduction of this option could be dependent on the introduction of a New Fee Order

Question 6: The OISC is committed to ensuring that all advisers representing clients before the new Tribunals are fit and competent to do so. It believes that it will be necessary to assess the advocacy of the advisers it permits to appear as representatives at immigration and asylum tribunal hearings. Given this commitment, which option listed in paragraph 8 above and illustrated in Annexes B-D is most appropriate?

CHAPTER 5 COMPETENCE ASSESSMENT

1. The OISC is also reviewing what it requires from those who wish to become regulated and how they can demonstrate that they would be fit and competent immigration advisers.
2. The OISC believes that an adviser should be able to demonstrate certain competencies that are relevant to the level and category of work the adviser is authorised to operate in. To date, the OISC has mostly focussed its competence assessment upon immigration knowledge. There are however other skills relevant to being a good immigration adviser.
3. The OISC therefore proposes that other competencies besides knowledge should be assessed.
4. These would be
 - Skills in the English language (oral)
 - Skills in the English language (written)
 - Knowledge of Ethics pertinent to customer care, law and immigration
 - Skills in Advocacy
 - Knowledge of Case law

Question 7. Do you agree that, depending on the level or category the person is applying for that the OISC should require advisers to demonstrate their competence through assessing a range of skills and knowledge.

Questions for Consultation:

Question 1. Do you agree that there should only be two main categories of regulated work, Asylum and Managed Migration, and that all of the other categories should be absorbed into them?

Question 2. Do you agree with the proposal to split Level 1 into Service and Advice as outlined below?

Service and Assistance	Advice, Service and Assistance
Nationality checking <ul style="list-style-type: none">• Verifying documents and forwarding nationality applications to UKBA Asylum Assistance and Services <ul style="list-style-type: none">• Notifying the UKBA of a change of address• Extension of Temporary Admission• Applications for permission to work• Travel document applications for someone granted Humanitarian Protection/ Exceptional Leave to Remain	Basic applications that are within the Immigration Rules, including immigration employment documents and PBS. <ul style="list-style-type: none">• No advice on enforcement issues such as Bail• No appeal work

Question 3: Do you agree that Level 2 should be incorporated with the work to be undertaken at new levels?

Question 4: Do you agree that the transition period is appropriate?

Question 5: In the event of the number of Levels being reduced to two, do you agree with the proposed descriptions?

Question 5b: In the event of the number of Levels being remaining at three, albeit three different ones, do you agree with the proposed descriptions?

Question 6: The OISC is committed to ensuring that all advisers representing clients before the new Tribunals are fit and competent to do so. It believes that it will be necessary to assess the advocacy of the advisers it permits to appear as representatives at immigration and asylum tribunal hearings. Given this commitment, which option listed in paragraph 8 (chapter 4) above and illustrated in Annexes B-D is most appropriate?

Question 7. Do you agree that, depending on the level or category the person is applying for that the OISC should require advisers to demonstrate their competence through assessing a range of skills and knowledge.

CHAPTER 5 RESPONDING TO THE CONSULTATION

The OISC welcomes comments on the proposals set out in this consultation paper.

Responses should be made using the consultation response proforma that is available at: http://www.oisc.gov.uk/latest_information/consultations/.

Completed consultation proformas should be sent, no later than 29 January 2010, to the following addresses:

Electronic:

consult@oisc.gov.uk

By post:

Policy Section

Guide on Competence Consultation

Office of the Immigration Services Commissioner

5thg Floor

Counting House

53 Tooley Street SE1 2QN

CONFIDENTIALITY & DISCLAIMER

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 [FOIA], the Data Protection Act 1998 [DPA] and the Environmental Information Regulations 2004).

If you want information that you provide to be treated as confidential, you should make this clear. Under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the OISC.

The OISC will process your personal data in accordance with the DPA, and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Consultation criteria

The Consultation follows the Government's Code of Practice on Consultation - the criteria set out below:

Criterion 1 - When to consult

Formal consultation should take place at a stage when there is scope to influence the policy outcome.

Criterion 2 - Duration of consultation exercises

Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

Criterion 3 - Clarity of scope and impact

Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

Criterion 4 - Accessibility of consultation exercises

Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

Criterion 5 - The burden of consultation

Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

Criterion 6 - Responsiveness of consultation exercises

Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

Criterion 7 - Capacity to consult

Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

The full Code of Practice on Consultation is available at:

<http://www.berr.gov.uk/whatwedo/bre/consultation-guidance/page44420.html>

Summary of the current OISC levels and categories

Area of work	Level 1 Initial advice	Level 2 Casework	Level 3 Advocacy and representation
Asylum	No work on applications permitted (Limited assistance within the immigration rules only)	All aspects of asylum applications and related HRA applications, Case Resolution/Legacy Cases and Active Review. Lodging (in exceptional circumstances) Notices of Appeal	Substantive appeals work, including representation in the AIT, specialist casework
Entry clearance, Leave to Enter or Leave to Remain	Basic applications that are within the Immigration Rules, including immigration employment documents and PBS	Out-of-time applications, concessionary policies, lodging (in exceptional circumstances) Notices of Appeal and Statements of Additional Grounds, representations to the UKBA on illegal entry, overstayer, removal and deportation cases	As above
Nationality and citizenship	Basic applications for registration and naturalisation	Discretionary and complex applications	Specialist casework
EU and EEA immigration law	Basic applications for EEA nationals and non-EEA family members that are within the Immigration Rules, including applications for A8 and A2 nationals	Discretionary and complex applications, lodging (in exceptional circumstances) Notices of Appeal	Substantive appeals work, including representation in the AIT, specialist casework
Detention, applications for temporary admission, CIO bail, immigration judge bail	An adviser at this level must not provide advice/ services in this area	Representations to the UKBA, applications for temporary admission, CIO bail	Immigration judge bail, including representation at AIT hearings

Summary of Bands (Option ii)

All Advocacy work is within the higher band.

<u>Area of Work</u>	<u>Asylum and Protection</u>	<u>Asylum, Human Rights, and Enforcement (Bail/ Detention/ Removal/Banning Orders)</u>
<p>(Band A): Asylum Assistance and Services</p> <ul style="list-style-type: none"> • Notifying the UKBA of a change of address • Extension of Temporary Admission • Applications for permission to work • Travel document applications for someone granted Humanitarian Protection/ Exceptional Leave to Remain 	<p>(Band B): Advocacy and Representation</p> <p>All aspects of asylum applications and related HRA applications, Case Resolution/Legacy Cases and Active Review. Lodging Notices of Appeal. Substantive appeals work, , specialist casework.</p> <p>Representations to the UKBA on illegal entry, overstayer, removal and deportation cases. Representations to the UKBA, applications for temporary admission, CIO bail,</p> <p>Representation in the AIT, Immigration judge bail</p> <p>Upper Tribunal representation</p>	
<u>Area of Work</u>	<u>Managed Migration</u>	<u>Managed Migration (Entry clearance/ Leave to Enter or Remain/ Nationality & citizenship/ EU and EEA Law), Human Rights, Enforcement (Bail/ Detention/ Removal/Banning Orders)</u>
<p>(Band A): Advice, Assistance And Service</p> <p>Basic applications that are within the Immigration Rules, including immigration employment documents and PBS.</p> <ul style="list-style-type: none"> • No advice on enforcement • No appeals work 	<p>(Band B): Advocacy and Representation</p> <p>Discretionary and complex applications. Out-of-time applications, concessionary policies, lodging Notices of Appeal and Statements of Additional Grounds. Specialist casework</p> <p>Representations to the UKBA on illegal entry, overstayer, removal and deportation cases. Representations to the UKBA, applications for temporary admission, CIO bail</p>	
<p>Assistance and Service</p> <p>Nationality checking</p>	<p>Representation in the AIT, Immigration judge bail</p> <p>Upper Tribunal representation</p>	

Summary of Bands (Option iii)

A Specialist level within the new higher band,

<u>Area of Work</u>	<u>Asylum and Protection</u>	Asylum, Human Rights, and Enforcement (Bail/ Detention/ Removal/Banning Orders)	
<p>(Band A): Asylum Assistance and Services</p> <ul style="list-style-type: none"> Notifying the UKBA of a change of address Extension of Temporary Admission Applications for permission to work Travel document applications for someone granted Humanitarian Protection/ Exceptional Leave to Remain 	<p>(Band B): Representation</p> <p>All aspects of asylum applications and related HRA applications, Case Resolution/Legacy Cases and Active Review. Lodging Notices of Appeal. Substantive appeals work, , specialist casework. Representations to the UKBA on illegal entry, overstayer, removal and deportation cases. Representations to the UKBA, applications for temporary admission, CIO bail.</p>	<p>Advocacy Representation in the AIT, Immigration judge bail</p> <p>Upper Tribunal representation</p>	
	<th data-bbox="217 1173 459 1357"><u>Area of Work</u></th> <th data-bbox="459 1173 820 1357"><u>Managed Migration</u></th> <th data-bbox="820 1173 1361 1357">Managed Migration (Entry clearance/ Leave to Enter or Remain/ Nationality & citizenship/ EU and EEA Law), Human Rights, Enforcement (Bail/ Detention/ Removal/Banning Orders)</th>	<u>Area of Work</u>	<u>Managed Migration</u>
<p>(Band A): Advice, Assistance And Service</p> <p>Basic applications that are within the Immigration Rules, including immigration employment documents and PBS.</p> <ul style="list-style-type: none"> No advice on enforcement No appeals work 	<p>(Band B): Representation</p> <p>Discretionary and complex applications. Out-of-time applications, concessionary policies, lodging Notices of Appeal and Statements of Additional Grounds. Specialist casework Representations to the UKBA on illegal entry, overstayer, removal and deportation cases. Representations to the UKBA, applications for temporary admission, CIO bail.</p>	<p>Advocacy Representation in the AIT, Immigration judge bail</p> <p>Upper Tribunal representation</p>	
<p>Assistance and Service</p> <p>Nationality checking</p>			

Annex D

Summary of Bands (Option iv) three bands but with different separations

<u>Area of Work</u>	<u>Asylum and Protection</u>	<u>Asylum, Human Rights, and Enforcement (Bail/ Detention/ Removal/Banning Orders)</u>	
<p>(Band A): Asylum Assistance and Services</p> <ul style="list-style-type: none"> • Notifying the UKBA of a change of address • Extension of Temporary Admission • Applications for permission to work • Travel document applications for someone granted Humanitarian Protection/ Exceptional Leave to Remain 	<p>(Band B): Specialist Representation</p> <p>All aspects of asylum applications and related HRA applications, Case Resolution/Legacy Cases and Active Review. Lodging Notices of Appeal. Substantive appeals work, , specialist casework. Representations to the UKBA on illegal entry, overstayer, removal and deportation cases. Representations to the UKBA, applications for temporary admission, CIO bail.</p>	<p>(Band C):</p> <p>Advocacy</p> <p>Representation in the AIT, Immigration judge bail</p> <p>Upper Tribunal representation</p>	