

Summary: Intervention & Options

Department /Agency: UK Border Agency	Title: Impact Assessment of revisions of the OISC's guidance on competence	
Stage: Partial IA for Consultation	Version: 1.0	Date: 18 th September 2009
Related Publications: http://www.oisc.gov.uk/how_to_become_an_immigration_adviser/guidance_on_competence/		

Available to view or download at: http://www.oisc.gov.uk/latest_information/consultations/

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What is the problem under consideration? Why is government intervention necessary?

Immigration advisers must not operate beyond their authorised level of competence as set out in guidance by the Office of the Immigration Services Commissioner (OISC). Changes in immigration policy and the immigration tribunal system over the last few years have meant that the current guidance no longer fits the regulatory environment. This has created a degree of confusion and so intervention is necessary to consider whether changes should be made to the guidance.

What are the policy objectives and the intended effects?

The objective is to provide improved competency guidance for the immigration advice and services sector that continues to ensure the provision of high quality immigration advice. The intention is to simplify and clarify the current competency bandings and their descriptions, and ensure that the regulatory regime is compatible with current immigration policies and procedures.

What policy options have been considered? Please justify any preferred option.

- Option 1: No change
- Option 2: Revise and simplify the guidance on competence
- Option 3: Complete revision of the OISC competence framework

Option 2 is the preferred option. Simplification and amendments to the guidance will improve clarity for advisers, enforcement officials and future clients.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

October 2010

Ministerial Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

.....Date:

Summary: Analysis & Evidence

Policy Option: 2	Description: Revise and simplify the guidance on competence to improve clarity
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COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' Familiarisation costs for Immigration advisors: £123,000 Familiarisation costs for OISC officials: £3,000
	One-off (Transition) Yrs £ 126,000	1	
	Average Annual Cost (excluding one-off) £ 0		10
			Total Cost (PV)
Other key non-monetised costs by 'main affected groups' Reprinting of stationary for Immigration advisers; cost of time for OISC enforcers and immigration advisers to assess additional competence requirements.			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'
	One-off Yrs £ Unknown	1	
	Average Annual Benefit (excluding one-off) £ Unknown		10
			Total Benefit (PV)
Other key non-monetised benefits by 'main affected groups' Reduction in regulatory burden and training for competence assessments for those undertaking Level 1 service work; reduction in costs for the client associated with the upper tribunal; improved clarity for immigration advisers, OISC enforcers and potential clients; improved protection and level of service for clients.			

Key Assumptions/Sensitivities/Risks

For the cost calculations an assumption is made that the number of immigration advisors and OISC officials will stay at current levels.

Price Base Year 2008	Time Period Years 10	Net Benefit Range (NPV) £ Unknown	NET BENEFIT (NPV Best estimate) £ Unknown
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What is the geographic coverage of the policy/option?	UK			
On what date will the policy be implemented?	01/04/10			
Which organisation(s) will enforce the policy?	OISC			
What is the total annual cost of enforcement for these organisations?	£3,000 (one-off)			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	N/A			
What is the value of the proposed offsetting measure per year?	£N/A			
What is the value of changes in greenhouse gas emissions?	£N/A			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro 0	Small 0	Medium 0	Large 0
Are any of these organisations exempt from the change?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)	
Increase of	£ 0	Decrease of	£ 0
		Net Impact	£ 0

Key: Annual costs and benefits: (Net) Present

Summary: Analysis & Evidence

Policy Option: 3	Description: Complete revision of the OISC competence framework
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COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' Familiarisation costs for Immigration advisors: £245,000 Familiarisation costs for OISC officials: £6,000
	One-off (Transition)	Yrs	
	£ 251,000	1	
	Average Annual Cost (excluding one-off)		
£ 0	10	Total Cost (PV)	£ 251,000
Other key non-monetised costs by 'main affected groups' Reprinting of stationary for Immigration advisors (higher than under option 2); cost of time for OISC enforcers and immigration advisers to assess additional competence requirements.			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'
	One-off	Yrs	
	£ Unknown	1	
	Average Annual Benefit (excluding one-off)		
£ Unknown	10	Total Benefit (PV)	£ 0
Other key non-monetised benefits by 'main affected groups' Reduction in regulatory burden and training for competence assessments for those undertaking Level 1 service work; reduction in costs for the client associated with the upper tribunal; improved clarity for immigration advisers, OISC enforcers and potential clients; improved protection and level of service for clients.			

Key Assumptions/Sensitivities/Risks

For the cost calculations an assumption is made that the number of immigration advisors and OISC officials will stay at current levels.

Price Base Year 2009	Time Period Years 10	Net Benefit Range (NPV) £ Unknown	NET BENEFIT (NPV Best estimate) £ Unknown
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What is the geographic coverage of the policy/option?	UK			
On what date will the policy be implemented?	01/04/10			
Which organisation(s) will enforce the policy?	OISC			
What is the total annual cost of enforcement for these organisations?	£ 6,000 (one-off)			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	N/A			
What is the value of the proposed offsetting measure per year?	£ N/A			
What is the value of changes in greenhouse gas emissions?	£ N/A			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro 0	Small 0	Medium 0	Large 0
Are any of these organisations exempt from the change?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)			(Increase - Decrease)
Increase of	£ 0	Decrease of	£ 0
Net Impact			£ 0

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence Base (for summary sheets)

Background

1. Part V of the Immigration and Asylum Act 1999 created the Office of the Immigration Services Commissioner (OISC) to regulate the immigration advice and services sector. The OISC is a Non-Departmental Public Body and started operating in 2001 following the appointment of the Commissioner and Deputy Commissioner the previous year.
2. The OISC's role is to protect those who seek immigration advice and/ or services and to assist in the prevention of abuse of the UK's immigration system. The OISC, through the powers of the Commissioner, acts as regulator, ombudsman and prosecutor.
3. It is illegal to offer immigration advice and services without being directly regulated by the OISC. The only exceptions to this are those who are regulated by a Designated Professional Body, such as the Law Society of England and Wales, or those who have been exempted by a Ministerial Order.
4. 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 (July 2008 edition) sets out the standards that advisers must meet in terms of necessary skills and knowledge. 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 Rule, and the Complaints Scheme).
5. When an organisation applies to become regulated by the OISC or applies for continued registration it is required to submit a statement of competence for the advisers that are or will be working in that organisation. This statement must demonstrate that they meet the obligatory competence requirements by, for example, the number of years experience they have, professional development they may have undertaken and the access they have to updated information on changes in law and procedures. New advisers and those wishing to move up an advice level must also undergo a written competence assessment appropriate to the level of advice they wish to be regulated at.
6. 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)¹, and regulatory or criminal action may be taken against them.
7. When auditing, OISC staff examine client files as a means of monitoring the competence of the adviser. They also have access to expert immigration consultants if they wish to review a particular adviser's competence.
8. The OISC divides immigration advice and services into three levels. The competence requirements increase with the complexity of the work. The levels are:
 - Level 1 – Initial advice
 - Level 2 – Casework
 - Level 3 – Advocacy and representationThe OISC has also divided the type of work allowed to be undertaken into separate categories. Currently these are:
 - Asylum

¹ http://www.oisc.gov.uk/how_to_become_an_immigration_adviser/code_of_standards/the_code_of_standards/

- 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

A summary of the type of work that can be carried out under each level is shown in figure 1 below.

Figure 1: Summary of current levels

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

Rationale

9. Over the last few years there have been a number of important developments in the immigration system. Firstly, we have seen the introduction of the Points-Based System (PBS), that the UKBA has described as, “the biggest shake up of the immigration system for 45 years”. In addition the passage of the Borders, Citizenship and Immigration Act 2009, the trend away from the use of discretion by UKBA, the continuing expansion of the European Economic Area, and changes to the Asylum and Immigration Tribunal have led to further changes in the system.
10. Considering this, the OISC believes that fundamental changes may be needed to its Guidance on Competence to ensure that the document better fits with the regulatory regime and to ensure greater clarity for immigration advisers, OISC enforcers, and potential clients. This would ensure that the categories better reflect current immigration applications.

Policy options

11. A number of policy options have been considered:
 - Option 1: No change
 - Option 2: Revise and simplify the guidance on competence
 - Option 3: Complete revision of the OISC competence framework

Objectives

12. The objective is to provide a simplified regulatory framework for the immigration advice and services sector that continues to ensure high quality immigration advice. The intention is to ensure further clarification for advisers, OISC caseworkers and potential clients about the 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.

Overview of options:

13. Option 1 would see no change to the guidance on competence, and thus leave a divergence between the regulatory framework and the guidance provided by the OISC.

Option 2 would see revisions and simplifications made to the guidance to ensure that it better ties into the current regulatory environment.

There are now really only two major categories of work Asylum and Managed Migration. Depending on the method for 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 linkages it has produced.

The proposed competence groups and descriptions of permitted work are set out in figure 2 below (further discussion is included in chapters 2 and 3 of the consultation document).

Figure 2: Proposed Summary of levels

Summary of OISC levels

Area of Work	Advice and Assistance (Band A)	Advocacy and Representation (Band B)
Asylum, Human Rights, and Enforcement (Bail/ Detention/ Removal/Banning Orders)	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 	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,
		Representation in the AIT, Immigration judge bail
Managed Migration (Entry clearance/ Leave to Enter or Remain/ Nationality & citizenship/ EU and EEA Law), Human Rights, Enforcement (Bail/ Detention/ Removal/Banning Orders)	Basic applications that are within the Immigration Rules, including immigration employment documents and PBS. <ul style="list-style-type: none"> • No advice on enforcement • No appeals work 	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
	Nationality Checking Service	

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, probably in 2010. The Upper Tribunal is a superior court of record, equivalent to the High Court which currently does not allow OISC regulated advisers to exercise rights of audience. Thus they cannot,

for example, appear on behalf of their clients at judicial review applications. There is nothing in the present legislation, however, that prevents OISC advisers, regulated at the appropriate level, from appearing before the new Upper Tribunal. Therefore the OISC is considering whether, as part of the revision, to permit some OISC advisers to appear before the new Upper Tribunal. The OISC is currently considering what level of competence would be appropriate for this work and whether to allow all those classed as band B advisers to appear, or create a specialist level within band B, or create a band C specifically for this purpose.

As part of the revisions to the guidance the OISC would consider whether to alter what is required for immigration advisers to demonstrate their competence. This would include 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, and knowledge of case law.

Under *Option 3* there would be a complete revision of the OISC competence framework. This would allow the guidance to be simplified and major changes made to the competence framework. In addition the OISC would consider permitting all current Level 3 advisers to appear before the Upper Tribunal and would also consider revising what is required for immigration advisers to demonstrate their competence.

Appraisal

Costs and Benefits of the options

Option 1: Do Nothing

14. Option 1 would leave a divergence between the regulatory framework and the guidance provided by the OISC. This could lead to some confusion for immigration advisers, OISC caseworkers and clients (particularly for those new to the system).
15. Option 1 forms the baseline against which other options are assessed. Under this option there would be no incremental benefits or costs compared to the current system. However, this does not necessarily mean that costs will stay stationary over time; there remains some uncertainty regarding how costs will change in the future and around the number of immigration advisers. For the purpose of this assessment we have assumed that current costs and benefits, and the number of advisers will stay constant. As of the 31st March 2009 there were 1,723 regulated organisations (753 registered 970 exempt) and 4,199 regulated advisers (1,851 registered and 2,386 exempt).²

Option 2: Revise and simplify the guidance on competence

16. Level 1 changes
The Nationality Checking Service (NCS) run by various local authorities means that a local authority can accept and forward applications for British citizenship or nationality to UKBA. They confirm that the forms are correctly completed, and they copy documents and return them to the applicant. They also ensure that the applications are validly submitted, and that the unwaivable requirements for citizenship are met. However, they do not give nationality advice. Currently these individuals have to meet all of the competence requirements for Level 1 advisers, which the OISC consider to be unnecessary. Under option 2, Level 1 would be split into advice and services for the specific areas of asylum and nationality checking. This would enable those who only

² The number of registered and exempted advisers does not equal the number of regulated advisers because some advisers work in more than one organisation.

provide service/ assistance to clients such as NCS and asylum assistance to apply under “Level 1 service” and to be judged fit and competent in that area. This may ease the regulatory burden on 93 local authorities doing NCS work and 16 voluntary sector bodies doing asylum work through a reduction in the time it would take for applications and competence assessments. The design and content of the applications has not yet been determined and so a cost saving for this change currently remains non-monetised.

17. Level 2 changes

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 (discretionary applications and advocacy). The OISC therefore believes that this level should now be discontinued. The removal of Level 2 will directly impact on 131 organisations or 7.6% of the regulated sector; however, most are unlikely to change the work that they will undertake. Simplifying to two categories of work regulated (Asylum and Managed Migration) and absorbing the other categories into them would have little impact. Both may however affect how an organisation chooses to describe the advice and services they provide, which could have resource implications due to costs associated with reprinting of stationary (e.g. letter headings). The OISC would consider allowing a period of transition during which time either the old or the new descriptor could be used. This would reduce stationary costs allowing some changes to be covered by normal reprinting costs experienced by the organisations.

18. Descriptive changes

The current descriptors used in the guidance do not 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. For example, Level 1 advisers are allowed to make applications within the immigration rules, which are, in effect, casework. The descriptor ‘Initial Advice’ for Level 1 is therefore inaccurate and poses the danger of misleading prospective clients. Amendments and simplification of descriptives should improve clarity for immigration advisers, OISC enforcers and potential clients.

19. Change in competence assessment

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. However, there are other skills required to be a good immigration adviser. The OISC therefore proposed that other competencies besides knowledge should be assessed- 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. A change in how competency is assessed should ensure that clients are given a better level of service. However, higher costs could be incurred by both immigration advisers and OISC enforcement officials due to the additional time it may take for these extra competencies to be assessed.

20. Upper tribunal

Representation at the Upper tribunal by regulated advisors previously involved in the client’s case would ensure continuity for those seeking advice and reduce costs associated with case briefing. It is likely that these savings would fall to the client. Further training would be required to gain competence for this type of work but this would be a commercial decision. However, these benefits will only be realised if advisors 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 will suffer, the Tribunal could be burdened with delays and the reputation of all advisors could be damaged.

21. There would be familiarisation costs of the changes for immigration advisors. It is assumed that it would take each of the 4,199 regulated advisors 30 minutes each to fully understand the changes. The Annual Survey for Hours and Earnings (ASHE) 2008 (excluding overtime) gives a wage estimate for solicitors and lawyers, judges and coroners which is then up-rated by 21% to include overheads to obtain an estimated wage rate of £29.17. This equates to approximately £123,000. In addition there would be training costs for OISC enforcement officials. It is assumed that each of the 40 OISC enforcement officials would require half a days training. A HEO target salary for 2009/10 up-rated by 21% to include overheads is gives an estimated wage rate of £35,465, which would equate to a one-off cost of approximately £3,000.
22. Option 2 would improve clarity for immigration advisers, officials, and potential clients and may better facilitate compliance to the certified level of competence. This could reduce enforcement costs and ensure a higher level of protection for those seeking immigration advice and immigration services.

Option 3: Complete revision of the OISC competence framework

23. All costs and benefits of option 3 will be the same as option 2 apart from those mentioned below.
24. Under option 3 there would be higher costs associated with familiarisation than under option 2. It is estimated that it would take approximately 1 hour for immigration advisors to familiarise themselves with the new system. This is equivalent to a one-off cost of approximately £245,000. In addition it is estimated that it would take OISC officials approximately 1 day of training to familiarise themselves with the new system. This would equate to a one-off cost of approximately £6,000.
25. Additional stationary costs are expected to be slightly higher under option 3 than option 2, because more individuals would be affected if the guidance were completely revised. Potentially, a complete revision could affect every immigration advisor. As under option 2, the OISC would allow a period of transition for all changes to be made, and so some of these costs would fall under normal reprinting costs.
26. Option 3 could create greater clarity for those new to the immigration system; however, it could create additional confusion and greater upheaval for those currently operating in the sector.

Consultation Question

We welcome comments on the costs and benefits described above in paragraphs 14 to 26. If you disagree with any of the assumptions or estimates used please justify your position. If available, please provide any evidence to support your views. In addition we would welcome your thoughts on additional benefits or costs not mentioned in this assessment.

Preferred Option:

27. Option 2, which would see a revision and simplification of the guidance on competence, is the preferred option. This would build upon the success of the existing competency framework, whilst improving clarity for advisors and for enforcement officers. This should lead to greater levels of competence compliance, ensuring a higher level of protection for those seeking immigration advice.

Competition Assessment:

28. OISC competency requirements are a form of licensing which ensures that suppliers have achieved a minimum level of competence to be able to operate in a particular market. Through this licensing the OISC therefore directly limits the number of suppliers. Any change in competency testing could affect the number approved to operate in this market, directly affecting the number of suppliers. The proposals are not expected to indirectly limit the number or range of suppliers, limit the ability of suppliers to compete, or reduce suppliers' incentives to compete vigorously.

Monitoring, Evaluation, Feedback:

29. At present there appears to be no strong case for doing a formal evaluation of the proposed changes given the scale of costs involved and the type of changes being made, but the operational success of the changes will be monitored 6 months and 12 months after implementation. Feedback will be sought from an adviser survey and meetings with regulated advisers which will then be fed into future guidance if this is deemed to be necessary.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	No	Yes
Legal Aid	No	Yes
Sustainable Development	No	Yes
Carbon Assessment	No	Yes
Other Environment	No	Yes
Health Impact Assessment	No	Yes
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	Yes
Rural Proofing	No	Yes

Small Firms Impact Test

All firms within the immigration advice and services sector can be classed as micro or small. The OISC have and will continue to consider steps to reduce the impact on them and shall actively seek their input during the consultation process.

Legal Aid

We have carefully considered the impact on legal aid and have concluded that there is unlikely to be an impact arising as a result of these proposals. However, we will continue to work with the Ministry of Justice throughout the consultation period to assess the impact on legal aid.

Other Impact tests

We have carefully considered other implications of the policy relating to sustainable development, environmental issues (including a carbon assessment), potential health impacts, race disability and gender equality, human rights, and rural proofing and do not believe that the proposed reforms will have a significant impact upon any of these issues.