

# **Delivering immigration advice and services: Consultation**

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March 2020

## Contents

<b>About this consultation .....</b>	<b>3</b>
<b>How to respond .....</b>	<b>4</b>
Online questionnaire.....	4
Reasonable adjustment requests and questions.....	4
Publishing responses.....	4
<b>Background .....</b>	<b>5</b>
Our Standards and Regulations.....	5
Immigration advice and services.....	5
Providing immigration advice and services before 25 November 2019 .....	6
Providing immigration advice and services after 25 November 2019 .....	6
<b>Moving forward: our approach.....</b>	<b>7</b>
<b>Amending our Standards and Regulations .....</b>	<b>8</b>
<b>Focused activities within the immigration advice and services sector.....</b>	<b>12</b>
<b>Questions in full and next steps .....</b>	<b>13</b>
<b>Annex one: our proposed rule amendment.....</b>	<b>15</b>

# About this consultation

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We are seeking views about situations where solicitors, registered European lawyers and registered foreign lawyers provide immigration advice and services, and the organisations they can work for when they do this.

Our Standards and Regulations set out the standards we expect of those we regulate, wherever they work, and allow solicitors to work flexibly. Since their introduction on 25 November 2019 solicitors and other lawyers we regulate have been able to start providing some legal services to members of the public from organisations that we do not regulate.

These changes are not currently in place in respect of immigration advice and services. Instead transitional arrangements are in place that continue the position as it was under our previous regulatory arrangements, which require these services to be provided from a firm regulated by us or another legal services regulator, or, in certain circumstances, through non-commercial organisations, such as law centres.

In this consultation paper we explain the reasons for this. We then set out our approach to help us move forward, which we are seeking views on

We would like to hear what you think should happen next. The consultation is open for your comments from **11 March 2020** until **22 April 2020**.

After it closes we will collate and analyse any responses. We will then confirm our final position.

# How to respond

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## Online questionnaire

Our online consultation questionnaire is a convenient, flexible way to respond. You can save a partial response online and complete it later. You can download a copy of your response before you submit it.

[Start your online response now.](#)

## Reasonable adjustment requests and questions

We offer reasonable adjustments. [Read our policy to find out more.](#)

Contact us - [immigrationservices@sra.org.uk](mailto:immigrationservices@sra.org.uk) if you would prefer to respond to this consultation using a different format or if you have any questions about the consultation.

## Publishing responses

We will publish and attribute your response unless you request otherwise.

# Background

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## Our Standards and Regulations

1. The Solicitors Regulation Authority (SRA) is the regulator of solicitors and law firms in England and Wales. Our purpose is to protect the public by ensuring that solicitors meet high standards, and by acting when risks are identified.
2. Our [Standards and Regulations](#) came into effect on 25 November 2019. From this date solicitors, registered European lawyers (RELS) and registered foreign lawyers (RFLs) that we authorise to work in England and Wales have been permitted to provide unreserved legal services to the public from organisations that we do not regulate, as well as continuing to provide a full range of legal services to the public from law firms that we regulate. They may also now choose to work as SRA-regulated freelance solicitors.
3. The Standards and Regulations include some restrictions on the types of services that solicitors, RELs and RFLs can provide to the public in different scenarios. In particular, this includes the circumstances under which they are able to provide immigration services.

## Immigration advice and services

4. Part V of the Immigration & Asylum Act 1999 (IAA) sets the requirements for the provision of immigration advice and immigration services across the United Kingdom. [Section 84](#) of the IAA provides that only a qualified person may provide these services, and then sets out when a person is a qualified person.
5. The Office of the Immigration Services Commissioner (OISC) is also established by the IAA, with a remit to regulate the provision of immigration advice and services throughout the UK. The OISC operates a regulatory system for immigration advisers and organisations that provide immigration services. They currently regulate 1,612 organisations and 3,135 registered advisers, who provide immigration advice and services at three different levels of authorisation.
6. The Law Society for England and Wales is a designated qualifying regulator under section 86A of the IAA<sup>1</sup>. This means that where we authorise a person to provide immigration advice and services under the IAA we, rather than the OISC, regulate any such services.
7. We authorise 153,306 practising solicitors, RELs, RFLs and Exempt European Lawyers (EELs), and 5,364 (or 3.5%) record on their 'MySRA' profile that they do

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<sup>1</sup> Others include the Chartered Institute of Legal Executives and the General Council of the Bar

some immigration work. In addition, 1,960 (19%) of the 10,263 firms that we regulate confirm that they do some immigration work<sup>2</sup>.

8. In practice any solicitor, REL or RFL may choose to do immigration work as long as they meet all our ethical standards and regulatory requirements.

## Providing immigration advice and services before 25 November 2019

9. Prior to 25 November 2019, solicitors, RELs and RFLs could provide immigration advice and services to members of the public from:

- SRA-regulated law firms
- authorised non-SRA firms (these are firms that are authorised by another approved regulator under the Legal Services Act 2007)
- law centres and other non-commercial organisations authorised by the OISC<sup>3</sup>

10. They were also permitted to provide immigration advice when working in-house for other organisations not falling into the categories above. In those situations, solicitors, RELs and RFLs were not able to provide immigration services to the public or a section of the public, but only to their employer as permitted by Rule 4 of the SRA Practice Framework Rules 2011.

## Providing immigration advice and services after 25 November 2019

11. Regulation 9.5 of the SRA's [Authorisation of Individuals Regulations \(AIRs\)](#) is not yet fully in force. As made, it would permit any solicitors, RELs and RFLs to do immigration work provided that the work is undertaken either through an SRA-authorized body, or an authorised non-SRA firm that is a qualified person under the IAA (such as an OISC regulated firm).

12. In effect this meant that if regulation 9.5 of the AIRs had come into force in its entirety, from 25 November 2019, the categories of organisation listed at paragraph 9 above would have been extended to also include fee-charging OISC-regulated organisations.

13. We consulted on this approach as part of our 'Looking to the future' proposals<sup>4</sup> in 2016 and 2017, although it did not receive significant comment. The new

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<sup>2</sup> Figures correct as of 9 January 2020

<sup>3</sup> As of 1 January 2020, there were 193 solicitors recorded as working in law centres and other non-commercial organisations regulated by the OISC

<sup>4</sup> ['Looking to the future - flexibility and public protection'](#) (September 2016) and ['Looking to the future - phase two of our handbook reforms'](#) (September 2017)

arrangement was designed to complement the existing regulatory and legislative frameworks for immigration work carried out in England and Wales, by maintaining existing restrictions that mean solicitors are only authorised to provide immigration advice or services to the public from organisations regulated in accordance with the IAA's requirements.

14. However, following discussions during 2019 with the OISC we decided to introduce transitional provisions that placed the new provisions on hold.
15. The transitional provisions have been made so that solicitors, RELs or RFLs continue to be authorised to undertake immigration work under the same arrangements as were in place before 25 November 2019.
16. We now want to introduce a suitable long-term position in our Standards and Regulations.

## Moving forward: our approach

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17. Our regulatory arrangements need to work effectively alongside the OISC's scheme of regulation. Solicitors and OISC-regulated advisers account for the majority of legal representatives actively working in the immigration advice sector, which as mentioned above consists of 3,135 advisers registered with the OISC, and 5,364 solicitors who record with us that they do some kind of immigration work. There are also approximately 1,500 further individuals authorised to undertake immigration advice by CILEx Regulation and the Bar Standards Board. It is important that we coordinate our respective regulatory frameworks so that they continue to prioritise the effective provision of immigration advice and services across England and Wales.
18. Our recent work with the OISC has focused on establishing a satisfactory position for solicitors, RELs and RFLs to be authorised by us to undertake immigration advice and services in a way which both we and the OISC agree provides appropriate protection and clarity for the public.
19. The IAA places a statutory duty on the OISC to ensure that organisations which they regulate to provide immigration advice and services are fit and competent to do so. We need to make sure that we continue to support the OISC to fulfil this duty.
20. We are therefore proposing to:
  - Amend the Standards and Regulations to only allow solicitors, RELs and RFLs to work at fee charging OISC regulated organisations if they are otherwise a qualified person under section 84 of the IAA, which usually will require them to register with the OISC. This ensures that the OISC retains full control of who they authorise to provide immigration advice and services to the public.

- Amend the Standards and Regulations to formalise arrangements that mean any individuals being supervised by solicitors, RELs and RFLs in non-commercial organisations registered with the OISC will need to be authorised directly by the OISC or authorised by a designated qualifying regulator.
- Begin a longer-term programme of activities focused on the immigration advice and services sector. This will help us to understand how our regulatory arrangements might need to evolve so that they are capable of quickly responding to risks within the immigration advice sector as they emerge.

21. We would like to get your views on the amendments to the Standards and Regulations and on our longer-term work.

## Amending our Standards and Regulations

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### Description

22. We are proposing to revise the provisions in regulations 9.5 to 9.7 of the AIRs to ensure that the OISC has full control of who they authorise to provide immigration advice and services to the public. The amended regulations are at Annex one.
23. The proposed amendments will require solicitors, RELs and RFLs authorised by us to become a qualified person under the IAA (usually by registering with OISC), should they wish to provide immigration advice and services to the public from commercial OISC regulated entities.
24. The proposed amendments will mean that, in situations where solicitors, RELs and RFLs are registered with the OISC to act as registered immigration advisers in OISC regulated organisations, they:
- Will not be able to supervise individuals in OISC regulated organisations so as to make them a qualified person under the IAA.
  - Must adhere to the OISC's Code of Standards and regulatory requirements when they are providing immigration advice and services to the public from OISC regulated organisations.

### What this will mean for solicitors, RELs and RFLs

25. Our proposed approach will mean that solicitors, RELs and RFLs will continue to be able to provide immigration advice and services to members of the public from:
- SRA-regulated law firms



- authorised non-SRA firms (meaning firms that are authorised by another approved regulator under the Legal Services Act 2007)
  - law centres and other non-commercial organisations authorised by the OISC.
26. To provide immigration advice and services to the public from fee charging OISC regulated organisations, solicitors will need to become otherwise qualified under the IAA, as will any individuals that they supervise. If they opt to do this through OISC registration, and if approved by the OISC, they will then be acting as an OISC registered adviser when undertaking immigration work from within those organisations. In those situations, solicitors will need to explain clearly to clients that they are acting in their capacity as an OISC registered adviser.
27. However, this will not prevent solicitors from maintaining their practising certificate, or RELs and RFLs from being registered with the SRA.
28. We also recognise that, while our [Code of Conduct for Solicitors, RELs and RFLs](#) applies to solicitors, RELs and RFLs wherever they work, there are some differences in approach between our regulatory framework and the OISC's Code of Standards. Our proposed rule amendment therefore makes it clear that, in situations where solicitors, RELs and RFLs act as an OISC registered adviser and are providing services from a commercial OISC regulated organisation, the OISC's Code of Standards prevails in any instances of conflict between the two codes. This reflects the principle of [section 54 of the Legal Services Act 2007](#) that in instances of conflict, entity regulation overrides individual regulation.
29. The OISC's complaints scheme will be applied to situations where a complaint is made about solicitors, RELs and RFLs while they were acting as an OISC registered adviser and providing services from an OISC regulated organisation. We will continue to work closely with the OISC regarding complaints or concerns about the conduct of individuals that we regulate.
30. None of this will prevent solicitors, RELs and RFLs from continuing to provide immigration advice and services in any of the ways described above at paragraph 25. Solicitors, RELs and RFLs who are employed in-house will also continue to be able to provide immigration advice and services to their employers.
31. This means that solicitors, RELs and RFLS employed by non-commercial organisations regulated by the OISC will continue to be able to provide immigration advice and services from those organisations as they do now. However, our proposed rule amendment formalises arrangements that mean any individuals being supervised by solicitors, RELs and RFLs under those circumstances will need to be registered with the OISC or authorised by a designated qualifying regulator.

## **Delivering the amendment**

32. We will:

- Apply to the Legal Services Board for approval of the amendments to our Standards and Regulations
- (if approved) Implement the amendments to our Standards and Regulations accordingly.

### Proposed amendment

33. At **Annex one** we have set out the wording of our proposed amendment to our AIRs. If approved, this will replace regulations 9.5 and 9.6 of the AIRs.

### Impacts of the amendment

34. Some of the potential impacts that we believe are associated with this part of our proposed approach are below.

35. We would like to hear what you think about these, as well as any other impacts you have identified.

<b>Category</b>	<b>Impacts of the amendment</b>
Consumers (members of the public and businesses)	<p>Consumers will continue to be able to access immigration advice and services from OISC-registered immigration advisers, OISC-regulated organisations (including fee-charging firms and not for profit organisations), and from solicitors and other regulated lawyers working in regulated firms.</p> <p>There may be a positive impact on the overall provision of immigration services to consumers across England and Wales if solicitors, RELs and RFLs who currently only work at regulated law firms choose to also register with the OISC, and begin to provide immigration services from fee-charging OISC organisations.</p>
Solicitors, RELs and RFLs	<p>Solicitors, RELs and RFLs will be able to continue to provide immigration advice and immigration services in the ways set out at paragraph 25 above. Our rule amendments formalise existing arrangements, meaning that solicitors may provide immigration advice and services from OISC regulated fee-charging organisations but only if they do so as an otherwise qualified person - most likely by registering with the OISC. If they do decide</p>

	<p>to be registered with the OISC, they can do so while still maintaining their SRA practising certificate.</p> <p>For solicitors working in OISC regulated not for profit organisations, we are also proposing to formalise arrangements by requiring people who are supervised by solicitors, RELs or RFLs working in these organisations to be registered with the OISC, or alternatively be suitably authorised by a designated professional body.</p>
<p>The OISC</p>	<p>Our proposed approach broadly reflects the arrangements that were in place prior to 25 November 2019.</p> <p>As such we have not identified any new impacts for the OISC’s regulatory scheme, or the overall approach towards the regulation of immigration advice prescribed by the IAA.</p>
<p>OISC-regulated organisations</p>	<p>Law centres and other non-commercial organisations that are regulated by the OISC will continue to be able to employ solicitors, RELs and RFLs to carry out public-facing immigration work, and under the same arrangements that they do currently.</p> <p>Solicitors, RELs and RFLs will need to make sure they only supervise individuals to do immigration work from non-commercial OISC-regulated organisations if those individuals are registered with the OISC, or suitably authorised by a designated professional body.</p> <p>As there are only 193 solicitors currently working in such organisations, and most OISC-registered law centres employ a small number of solicitors, we anticipate the impact will be small for law centres and other non-commercial OISC regulated organisations.</p>

**Question one:** What do you think about our intended approach to our rules for providing immigration advice and services?

**Question two:** Do you agree with the impacts we have identified for our approach to how we authorise solicitors to provide immigration advice and services? If not, please explain why.

**Question three:** Are there any other potential impacts you think we need to take into account?

## Focused activities within the immigration advice and services sector

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### Description

36. The second half of our approach is to take forward a programme of activities focused on building a clearer evidence-base and understanding of risks to consumers in the immigration advice sector, informed by the views of our stakeholders.
37. We will then use insights from those activities to consider options to evolve our regulatory approach towards immigration advice and services. This will include developing approaches to respond to concerns (raised by stakeholders including the OISC and Justice's Working Party) about solicitor supervision arrangements.

### Our proposed activities

38. Evidence-gathering and engagement activities we are aiming to take forward during 2020 include:
- Carrying out a focused thematic review of regulated law firms in the immigration services sector (building on our previous [investigation](#) into the quality of asylum advice). This will look at several areas, including the quality of representation and supervision arrangements.
  - Continuing our work with the national charity Justice in delivering a co-ordinated response to their Working Party's 2018 report '[Immigration and asylum appeals - a fresh look](#)'.
  - Continuing to work with stakeholders including the OISC, the Law Society's Immigration Law Committee, and the charity Refugee Action to explore the issues in the immigration sector and possible solutions.

### Using the evidence

39. We will use evidence identified during these activities to evaluate options focused on improving the regulation of the immigration advice sector, and regulatory responses that are targeted with greater accuracy towards the risks that

consumers can face when they need to access legal representation or advice about an immigration situation.

40. We might also identify consumer information requirements, and we will consider how we might approach these.

## **Outcomes**

41. The outcomes of this work will be guided by the findings of our evidence - gathering processes mentioned above. However, we will focus on two areas in particular:

### **Improving solicitor supervision arrangements – including:**

- developing options for creating new guidance resources for SRA-regulated firms, solicitors, RELs and RFLs that do immigration work, including clearer guidance about the regulatory expectations of supervision arrangements
- exploring how we can tighten our regulatory arrangements to prevent those who have been disqualified from the OISC's scheme from seeking to provide immigration services from SRA-regulated firms.

### **Helping consumers of immigration services to get better information - including:**

- exploration of bespoke information resources to help people using immigration services to understand the role of their legal adviser

**Question four:** Are there other areas you think we should focus on? If so, what are they?

## **Questions in full and next steps**

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42. We would like to hear what you think about our approach, and the areas we are proposing to focus on in the future.

43. If you believe we should be considering a different approach or that we should have another area of focus, please tell us what this could be.

44. We would also welcome any information you may have about the potential impacts of our approach. In particular, we are interested to hear what you think this could mean in practical terms for people who may need to take immigration advice in the future, or who may need to get legal representation regarding an immigration matter.

## Questions

**Question one:** What do you think about our intended approach to our rules for providing immigration advice and services?

**Question two:** Do you agree with the impacts we have identified for our approach to how we authorise solicitors to provide immigration advice and services? If not, please explain why.

**Question three:** Are there any other potential impacts you think we need to take into account?

**Question four:** Are there other areas you think we should focus on? If so, what are they?

# Annex one: our proposed rule amendment

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(this amendment is proposed as a replacement for the existing regulations 9.5 and 9.6 of our [Authorisation of Individuals Regulations](#).)

## Immigration work

- 9.5 If you are a *solicitor*, an *REL* or *RFL* you may undertake *immigration work*, provided that such work is undertaken:
- (a) through an *authorised body*;
  - (b) through an *authorised non-SRA firm* that is a qualified person under the Immigration and Asylum Act 1999;
  - (c) as an employee, for your employer or work colleagues; or
  - (d) through a non-commercial advice service which is registered with the Office of the Immigration Services Commissioner or otherwise qualified under the Immigration and Asylum Act 1999
- 9.6 Where you undertake work under rule 9.5(c) or (d) above, this must be undertaken by you personally and not by another person on your or your employer's behalf unless such person is a qualified person under the Immigration and Asylum Act 1999 other than under section 84(2)(e) of that Act.
- 9.7 If you undertake *immigration work* through a body which is registered with the Office of the Immigration Services Commissioner or otherwise qualified under the Immigration and Asylum Act 1999 other than as permitted under 9.5(d), you must be registered as an individual with the Office of the Immigration Services Commissioner or otherwise qualified to do so under the Immigration and Asylum Act 1999 and will undertake such work in that capacity.
- 9.8 Where you are undertaking work under 9.7 above, in the event of any conflict between the *SRA's regulatory arrangements* and any requirements placed on you by the Office of the Immigration Services Commissioner, the latter shall prevail.
- 9.9 Nothing in this section restricts you from undertaking *immigration work* if you fall within section 84(6) of the Immigration and Asylum Act 1999.