

# Impact Assessment

Title: Increased Powers for the Immigration Services Commissioner in the Border Security and Asylum Bill

Type of measure: Primary Legislation

Department or agency: Home Office

IA number: HO IA 1013

Type of Impact Assessment: Final

RPC reference number: New sanctions (including financial and compensation) for the Immigration Services Commissioner for the regulation and enforcement of immigration advice and services: RPC-OA-24023-OA

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# 1. Summary of proposal

## Introduction of new powers for the Immigration Services Commissioner:

1. The Border Security Asylum and Immigration Bill is designed to create a framework of new and enhanced powers to improve UK border security and to strengthen the asylum and immigration system. As described in the Impact Assessment published by the government on 30 January 2025, the measures within the legislation fall under four pillars.<sup>1</sup> The measures in relation to the Immigration Services Commissioner (ISC) form part of pillar four: Introducing measures to support and strengthen the UK's Asylum and Immigration System.
2. The existing powers of the ISC are designed to regulate those providing immigration advice who are not otherwise legal professionals and who are not regulated by their own regulators/professional bodies. The Immigration Advice Authority (IAA) (previously known as the Office of the Immigration Services Commissioner (OISC)) is a non-departmental arms' length body of the Home Office established by the Immigration and Asylum Act 1999 (IAA 1999)<sup>2</sup> to regulate the provision of immigration advice and services. The powers for the ISC to regulate immigration services providers comes from the IAA 1999, as amended by the Nationality, Immigration and Asylum Act 2002<sup>3</sup> and the Immigration Act 2014<sup>4</sup>.
3. The IAA 1999 specifies that no one can provide immigration advice and services unless they are a qualified person. Qualified persons are those registered by the IAA, or those who are authorised to provide immigration advice and services by other regulators or professional bodies such as the Solicitors Regulation Authority (SRA), the Law Society of Scotland, the Law Society of Northern Ireland, the Bar Standards Board (or Scottish and Northern Ireland equivalents), or the Chartered Institute of Legal Executives. A qualified person is also someone acting under the supervision of one of the above.
4. The ISC assesses those who provide immigration advice to ensure they are fit and competent to do so by inspecting the organisations and investigating complaints. They also enforce the regulatory regime by investigating and, where appropriate, prosecuting those providing immigration advice illegally. The work of the ISC protects the vulnerable from the risks and dangers of illegal advice or poor service and works to improve the quality of advice.
5. The current range of available sanctions for registered advisers to the ISC is restricted to removal of registration, with limited ability to take further action against registered advisers to act as a deterrent on poor behaviour, or to improve standards of behaviour. This means that the ISC is not in the same position as other regulators, particularly the SRA, in using sanctions against its registered advisers.
6. The proposed measures seek to extend the powers of the ISC to ensure it is a modern, efficient, flexible regulator equipped to meet the challenges of effective regulation and

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<sup>1</sup> Border Security and Asylum Immigration Bill 2025 Impact Assessment:

<https://www.gov.uk/government/publications/border-security-asylum-and-immigration-bill-2025-impact-assessment/border-security-asylum-and-immigration-bill-2025-impact-assessment-accessible>

<sup>2</sup> Immigration and Asylum Act 1999, Schedule 5: <https://www.legislation.gov.uk/ukpga/1999/33/schedule/5>

<sup>3</sup> Nationality, Immigration and Asylum Act 2002: <https://www.legislation.gov.uk/ukpga/2002/41/contents>

<sup>4</sup> Immigration Act 2014: <https://www.legislation.gov.uk/ukpga/2014/22/contents/enacted>

enforcement of immigration advice and services. The intention is that improved regulation of the advice sector will safeguard the integrity of the immigration system, protect advice seekers and improve the quality of applications received by the Home Office. The approach in amending primary legislation does not seek to impose further sanctions on businesses that operate within the current regulations, only to increase powers of the ISC to act against those who breach current regulations.

7. The proposed measures will:
  - a. Introduce the power to impose financial sanctions for unregulated advisers – this would be in addition to existing powers to prosecute advisers. Financial sanctions will be introduced whilst retaining the ability to prosecute.
  - b. Introduce the power to impose financial sanctions on those providing legal advice who are regulated by the ISC should they breach the standards set out in the code or legislative requirements.
  - c. Create a mechanism to require compensation/fee refunds for advice seekers from advisers, both regulated and unregulated who harm their clients.
  - d. Extend investigation powers related to regulated advisers by introducing a power to compel cooperation with investigations when former advisers are subject to a complaint. Increase power to disrupt by creating power for ISC to impose immediate suspension of regulated advisers when high harm activity is suspected.
8. The proposed measures for financial sanctions, fees and compensation and immediate suspension will come with a right of appeal to the First Tier Tribunal, in line with current processes for sanctions from the Commissioner.
9. These additional measures for the ISC within the Border Security, Asylum and Immigration Bill (“the Bill”) also look to achieve other objectives. They include:
  - reducing the gap in regulatory oversight if the ISC becomes unable to fulfil their duties by making amendments to the governance structure;
  - creating greater flexibility in the charging regime, to facilitate cost recovery of regulation and enable greater operational flexibility;
  - addressing a lack of flexibility within the primary legislation by which different types of immigration advice can be brought in and out of regulatory oversight; and
  - ensuring that those individuals with specific prohibitions cannot provide immigration advice, directly or under the supervision of a regulated individual.

## **2. Strategic case for proposed regulation**

10. Poor or unregulated immigration advice has a detrimental effect on the immigration system. The vulnerable nature of advice seekers means that they are often exploited in trying to secure immigration status. Poor quality advice leads to poor quality applications which will take Home Office caseworkers longer to consider, leading to delays in Home Office decision making. Poor legal advice can also impact on a person’s status, leading to destitution and greater reliance on support services provided by local authorities and communities. Good quality advice and services benefits the Home Office by assisting clients to accurately present their cases, allowing effective decision making.

### **Working with Regulated Advisers**

11. Under the IAA 1999, as amended by the Nationality, Immigration and Asylum Act 2002<sup>5</sup> and the Immigration Act 2014<sup>6</sup> the ISC has powers to:
  - approve, limit, vary or refuse an application for registration;
  - inspect an organisation's business activities;
  - cancel an organisation's registration;
  - investigate complaints and sanction registered advisers;
  - lay a disciplinary charge against a regulated adviser;
  - prosecute for illegally providing (or advertising) immigration advice and/or services; re-enter an adviser's premises (with a warrant); and
  - seize an unlawful adviser's records.
12. The ISC has a general duty to promote good practice by those who provide immigration advice or immigration services (section 83(3) of the IAA 1999). However, the ISC has limited powers to encourage compliance with its code which sets standards for those it regulates to have a duty to comply with.
13. The ISC powers act as a mechanism to deter, detect and disrupt unscrupulous advisers. There is a need for further regulatory measures because the current range of available sanctions for registered advisers to the ISC is restricted to removal of registration, with limited ability to take further action against registered advisers to improve standards of behaviour or to offer any type of remedy or compensation to clients.
14. This means that the ISC is not in the same position as other regulators, such as the SRA, in using sanctions against its registered advisers. There is a risk that advisers could seek to move between regulators to exploit gaps in regulatory powers or continue to act unlawfully because of loopholes created by these discrepancies.
15. The ISC currently does not have an ability to compel restitution for victims of poor or illegal advice, whereas other regulators do. This means that there is little incentive for advice seekers to complain about poor advice and limits the ability to receive vital intelligence to assist with investigations into both regulated and unregulated advice provision.
16. The ISC does not currently have the power to immediately suspend advisers when high harm activity is suspected; the power to do so would act as vital protection for vulnerable advice seekers. Currently the ISC can only cancel organisations from the scheme, which does not come into effect for 28 days.<sup>7</sup>

### **Dealing with Unregulated Advisers**

17. It is only the ISC as a regulator who has the power to investigate those who provide immigration advice when not qualified to do so (or when subject to a restraining order). Sections 91 and 92B of the IAA 1999<sup>8</sup> give the ISC the power to undertake investigations and prosecutions against those providing or advertising immigration

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<sup>5</sup> <http://www.legislation.gov.uk/ukpga/2002/41/contents>

<sup>6</sup> <http://www.legislation.gov.uk/ukpga/2014/22/contents/enacted>

<sup>7</sup> [Appeal a decision on your registration as an immigration adviser - GOV.UK https://www.gov.uk/guidance/appeal-a-decision-on-your-registration-as-an-immigration-adviser](https://www.gov.uk/guidance/appeal-a-decision-on-your-registration-as-an-immigration-adviser)

<sup>8</sup> Immigration and Asylum Act 1999, section 91: <https://www.legislation.gov.uk/ukpga/1999/33/section/91>

Immigration and Asylum Act 1999, section 92: <https://www.legislation.gov.uk/ukpga/1999/33/section/92>

advice and services illegally. An offence under section 91 of the IAA 1999 has a maximum sentence of two years imprisonment and/or a fine.

18. The ISC and the Home Office take most seriously potential abuse of the immigration system or exploitation of vulnerable clients by regulated advisers and those who provide advice without proper accreditation. Whilst the ISC has sufficient powers to fulfil its statutory obligations under the current model and can act against those found to be involved in such abuse, such cases are complex, and the Home Office believes that the ISC would benefit from being able to act more swiftly.
19. The ISC also faces challenges by not having sufficient tools to deter unregulated activity short of proceeding to prosecution. The lack of sanctions means that operating outside of regulation, or not in compliance with regulation, is a high reward with low-risk business model for unscrupulous advisers.

### **Disparity in regulator powers**

20. Disparity between regulatory regimes coupled with a lack of powers for the Commissioner in sanctioning or assuring the provision of immigration advice limits the ISC's ability for wide scale disruption activity. The differences in regulatory powers between the ISC and SRA create a situation where there is currently less protection for clients of ISC regulated providers.
21. The SRA regulate solicitors, including those who provide immigration advice. They have a greater range of powers than the ISC to assure compliance and improve standards, Their range of powers enable them to move more swiftly than the current powers of the ISC, meaning that in the event of high harm activity, the SRA would be able to take action to intervene and place conditions on an organisation, but the ISC would be limited in the action it could take. This can put those who seek advice from an ISC registered organisation at a disadvantage when compared with someone who is given advice by an SRA regulated firm, as they are afforded greater protections.
22. The powers the SRA have include the power to impose financial sanctions, to compel cooperation with their investigations, to apply restrictions to practising certificates to suspend activity whilst investigations are carried out. The Legal Ombudsman, whose remit does not cover IAA registered advisers has established a mechanism to compensate victims of poor advice from SRA regulated advisers.
23. These differences in regulatory approach can result in less protection for those who choose an ISC regulated provider or mean that the ISC cannot act to deal with abuse in the same manner, or as swiftly. Furthermore, it is evident that the ISC does not have comparable a range of tools to the SRA to deter and disrupt those who seek to abuse the immigration advice sector.

### **What evidence is there to support the problem statement and why is action necessary?**

24. Data from the OISC Annual Reports shows the numbers of interventions undertaken in recent years.<sup>9</sup>

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<sup>9</sup> OISC Annual Report and Accounts 2019/20:  
[https://assets.publishing.service.gov.uk/media/5f100bede90e070316eda5b5/OISC\\_Annual\\_Report\\_and\\_Accounts\\_2019-20\\_WEB.pdf](https://assets.publishing.service.gov.uk/media/5f100bede90e070316eda5b5/OISC_Annual_Report_and_Accounts_2019-20_WEB.pdf)

25. The 2021/22 Annual Report noted that the OISC (now IAA) opened 92 new complaint investigations against regulated advisers and carried out inspections of 67 regulated businesses. In addition, the OISC investigated 37 cases of illegal advice provision. Four regulated organisations had their registration cancelled during this business year due to concerns around fitness and/or competence and in the same year, two convictions were secured against advisers who had provided advice and services while unregulated.
26. In 2023/24 the OISC opened 90 new complaint investigations (compared with 69 in 2022/23) and carried out inspections on 79 regulated organisations. Three organisations had their registration cancelled or were refused continued registration. In addition, the OISC opened 13 new investigations (8 under S91 and 5 under S92B) and continued investigations on 43 cases into the business year. They secured two prosecutions, outcomes of which included a 12-month custodial sentence suspended for two years for fraud and giving unregulated immigration advice, and an 18-month suspended sentence for another adviser who had provided illegal advice whilst falsely claiming to be a solicitor.
27. Although significant numbers of complaints are investigated and inspections conducted with findings made against advisers, there are limited numbers of cancellations or prosecutions. This is due to the evidence needed and high burdens of proof required to justify the cancellation of registration, or to take forward a criminal prosecution. The action which can be taken by the Commissioner is often limited to issuing warnings to those unwilling to improve with no ability to enforce improvement or cessation of poor quality or illegal advice provision.
28. Financial sanctions would provide an alternative to criminal prosecution (for unregulated advisers) or cancellation of registration that acts as a deterrent to poor or illegal behaviour and provides a form of redress to clients through compensation and ability to recover fees paid.
29. The measures proposed to elevate the ISC's powers of investigation are likely to increase the ability of the Commissioner to gather evidence to support increased cancellations where advisers are acting in an unfit or incompetent manner. These measures include the power to compel previously regulated advisers who have left the scheme and those associated with regulated firms to cooperate with investigations. Other measures such as the power to immediately suspend advisers is designed to protect vulnerable advice seekers by preventing those causing high harm from continuing to act.

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OISC Annual Report and Accounts 2020/21:

[https://assets.publishing.service.gov.uk/media/60f19c4ed3bf7f568ffe87b1/OISC\\_Annual\\_Report\\_and\\_Accounts\\_2020-21\\_PDF.pdf](https://assets.publishing.service.gov.uk/media/60f19c4ed3bf7f568ffe87b1/OISC_Annual_Report_and_Accounts_2020-21_PDF.pdf)

OISC Annual Report and Accounts 2021/22:

[https://assets.publishing.service.gov.uk/media/6385c3c38fa8f54d5950d06d/OISC\\_2021-22\\_Annual\\_Report\\_and\\_Accounts\\_final\\_version.pdf](https://assets.publishing.service.gov.uk/media/6385c3c38fa8f54d5950d06d/OISC_2021-22_Annual_Report_and_Accounts_final_version.pdf)

OISC Annual Report and Accounts 2022/23:

[https://assets.publishing.service.gov.uk/media/6602c56ef1d3a09b1f32acb9/OISC\\_Annual\\_Report\\_and\\_Accounts\\_2022-23\\_certified.pdf](https://assets.publishing.service.gov.uk/media/6602c56ef1d3a09b1f32acb9/OISC_Annual_Report_and_Accounts_2022-23_certified.pdf)

OISC Annual Report and Accounts 2023/24:

[https://assets.publishing.service.gov.uk/media/679b57c2f2c688b4b630eaf3/Annual\\_Report\\_and\\_Accounts\\_2023-2024.pdf](https://assets.publishing.service.gov.uk/media/679b57c2f2c688b4b630eaf3/Annual_Report_and_Accounts_2023-2024.pdf)

30. The ISC do not keep or publish statistics on the number of times it would have been helpful to have use of a power that they don't currently have. However, they have been able to estimate the number of occasions where a lack of each of the proposed powers has prevented effective action. The evidence base section B, paragraph 26 contains this information.

### **Why is government action or intervention necessary?**

31. Government action is necessary to:

- bring parity into the regulatory regime, elevating the ISC's powers in line with that of the SRA.
- ensure effective regulation so there are consequences of unlawful advice to address the wider problems caused by irregular migration, protect vulnerable advice seekers and assist in tackling organised crime.
- mitigate the risk of gaps in the regulatory regime facilitating high harm abuse of the immigration and asylum systems by unscrupulous advisers.
- ensure public confidence in the ISC as a regulator who is able to take swift action when high harm abuse is identified.
- maintain credibility in the immigration advice sector to be able to protect the vulnerable from those who seek to abuse the immigration system.
- take steps to improve quality and availability of advice and services provided by the regulated sector by removing bad actors.

**If applicable, has a post-implementation review of the existing regulation been undertaken. If so, what were its findings and how does the information support the rationale for the measure? If not, why not? Has there been evaluation of any previous regulation in this area?**

32. The Home Office monitors ISC activity and measures performance which is reported in the ISC annual report and accounts<sup>10</sup>.

33. An evaluation of existing enforcement powers was conducted internally by the ISC and reviewed by the Home Office when the risks and issues in the gaps in regulatory system were highlighted following a media investigation in July 2023<sup>11</sup>.

34. In this reporting year, the ISC has concentrated on improving existing partnerships with relevant agencies and other enforcement bodies as well as making it easier for the public to report information, to ensure the ISC receive a wide range of intelligence information, allowing the organisation to more effectively detect advisers providing poor quality immigration advice and services, and those who are suspected of providing unlawful immigration advice and services.

35. The ISC have engaged with Home Office intelligence and enforcement, the Professional Enabler Disruptions, the Upper Tribunal (Immigration and Asylum Chamber) and worked closely with other legal regulators such as the SRA, Bar Standards Board, Cilex Regulation and the Legal Ombudsman, with support from the Ministry of Justice, to ensure that those involved in abuse of the system are identified.

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<sup>10</sup> OISC Annual Report and Accounts 2022 2023

[https://assets.publishing.service.gov.uk/media/6602c56ef1d3a09b1f32acb9/OISC\\_Annual\\_Report\\_and\\_Accounts\\_2022-23\\_certified.pdf](https://assets.publishing.service.gov.uk/media/6602c56ef1d3a09b1f32acb9/OISC_Annual_Report_and_Accounts_2022-23_certified.pdf)

<sup>11</sup> SRA | Statement: SRA closes down three immigration firms | Solicitors Regulation Authority

[www.sra.org.uk/sra/news/press/2023-press-releases/three-immigration-firms/](http://www.sra.org.uk/sra/news/press/2023-press-releases/three-immigration-firms/)

### 3. SMART objectives for intervention

#### Overarching objective

36. The proposals create legislation which will significantly enhance the ability of the ISC to enforce the existing regulation immigration advice. This will safeguard the integrity of the immigration system, protect advice seekers, and improve the quality of applications received by the Home Office. This will strengthen the wider immigration and asylum system, including protecting it against abuse, in turn rebuilding public confidence in the UK migration and borders system.

#### Sub-objectives

37. Improve the ability of the ISC to investigate poor and illegal practice, including facilitation of abuse of the immigration system, by compelling co-operation with investigations and allowing the ISC to suspend advisers while ISC investigates where high-risk activity is suspected.
38. Improve the ability of the ISC to disrupt poor and illegal practice, including facilitation of abuse of the immigration system, by introducing financial sanctions and requiring the repayment of fees and compensation to advice seekers.
39. Give the ISC parity with the powers of other regulators such as the Solicitors Regulation Authority, mitigating the damage caused by disparity in the regimes and equalising the protection for advice seekers.
40. The detail of the objectives is covered in more detail in evidence base section C below.
41. **Other measures within the Bill in relation to the ISC include:**
- Reduce the risk of a gap in regulatory oversight if the ISC becomes unable to fulfil their duties. [Governance]
  - Create greater flexibility in the charging regime of the ISC to facilitate cost recovery and enable greater operational flexibility. [Charging]
  - Improve the flexibility by which different types of immigration advice can be brought in and out of regulatory oversight. [Relevant matters]
  - Ensure individuals with prohibitions cannot provide immigration advice under the supervision of a regulated individual. [Supervision]
42. The intended outcomes and indicators of success for the interventions to improve the ability to investigate and disrupt include:
- those who seek to operate outside of regulation are deterred from doing so because the ISC has extended range of powers. This is not solely reliant on prosecution to act as a deterrent and also means that those who pose a real threat to advice seekers are prevented from doing so more swiftly;
  - greater compliance with the regulatory regime by registered advisers and driving up standards of advice, with an increased range of sanctions which act to ensure compliance of regulated advisers;
  - better identification of breaches leading to faster disruption action reducing the number of advice seekers harmed by poor advice;

- reduction in instances of repeat offences by low level and mid-level offenders where prosecution is not viable or is disproportionate;
  - earlier disruption meaning less resource intensive costs to the ISC and government in terms of later stage investigations;
  - ensuring parity between regulators to allow the ISC to deal with those who seek to abuse the existing gaps, and so that they are able to respond in a comparable way to other regulators;
  - removing the incentive of any financial gains made by those providing poor or unregulated advice;
  - with the possibility of redress from fee refunds or compensation there will be an increased number of complaints made by advice seekers who have received poor immigration advice, and awareness among the general public of the importance of seeking good, regulated immigration advice;
  - improving public confidence in the immigration advice sector, with a focus on ensuring good standards of advice coupled with appropriate measures to deal with those who seek to abuse the immigration system; and
  - increased vigilance on the regulated sector, with a reduction in breaches of 'fitness' codes following inspections and complaint investigations, and significant reduction in repeat findings of such breaches;
43. The outcomes of the objectives will be measurable through comparison with existing levels of compliance with the ISC code of standards and investigations following complaints and inspections for regulated advisers and through comparison with existing investigations, outcomes, and sanctions into complaints for unregulated advisers.
44. These measures will be achieved through a coherent implementation plan, involving engagement with the sector and development of appropriate frameworks, guidance and safeguards for each of the measures. The measures will be in place in line with the proposed implementation plan set out in part 8 by Autumn 2026.

#### **4. Description of proposed intervention options and explanation of the logical change process whereby this achieves SMART objectives**

45. The proposed option is to make legislative change. It is essential that the ISC as a regulator has the tools to disrupt poor and illegal practice, and that it has powers aligned to other legal regulators to minimise the harm caused by disparity in the regimes. Non-legislative measures have already been pursued by the ISC but with limited success (set out in evidence base section D paragraph 55 below), and the only option remaining is to amend the ISC's powers in legislation. These proposed legislative measures are an extension of existing regulation and are designed to give parity with other regulators, to reduce the effects of those who may seek to exploit any disparity, and to strengthen the ISC as a regulator.
46. The government propose to:

- a. legislate to extend the sanction powers of the ISC to improve powers to disrupt poor and illegal practice by:
    - imposing financial sanctions and fixed penalties on those providing legal advice who are regulated by the ISC should they fail to comply with the standards set out in the code or legislative requirements;
    - introducing financial sanctions in addition to existing powers of prosecution for unregulated advisers; and
    - creating a civil mechanism for fee refund/compensation (restitution) to be given to victims of poor practice by regulated and unregulated advisers;
  - b. legislate to extend the ISC powers to investigate poor practice and to allow for measures aligned with the powers of the SRA, namely:
    - compelling cooperation of advisers previously regulated by the ISC with an investigation of a complaint made related to the provision of immigration advice and services; and
    - giving power to immediately suspend an adviser from the scheme while investigation is underway which relates to serious fitness or competence issues;
47. The measures assessed in this document achieve the overarching objective to enhance the ability of the ISC to regulate immigration services, which will safeguard the integrity of the immigration system, protect advice seekers and improve the quality of applications received by the Home Office, strengthening the UK wider immigration and asylum system.
48. Introducing extended powers to the ISC, giving greater parity to those of the SRA, including financial sanctions for non-compliance, aims to strengthen the regulatory regime and improve the quality of advice and services. These powers would enable the ISC to fine advisers or organisations for fitness or competence issues, encouraging regulatory compliance and deterring repeat offending. Financial sanctions for persistent lower-level offences would ensure better applications and advice standards. Additionally, civil financial sanctions for unregulated advisers would act as a deterrent, reducing illegal advice provision. The ability to compel restitution for victims of poor or illegal advice would create better outcomes and incentivise complaints, enhancing the ISC's regulatory and enforcement activities. The measures within the bill to improve the powers to investigate poor practice, such as compelling advisers to cooperate, and the power to immediately suspend advisers all allow the ISC to be more effective in gathering information, protecting clients, and better deal with poor standards of immigration advice. The proposed measures for financial sanctions and immediate suspension will come with a right of appeal to the First Tier Tribunal.

## **5. Summary of long-list and alternatives**

49. The ISC's regulatory powers come from the IAA 1999. Currently the ISC can only cancel registration and lacks further deterrents against poor behaviour. This limits the ISC

compared with the SRA, who has broader powers such as imposing financial sanctions, compensating victims compelling cooperation with investigations and intervening to stop high harm activity.

50. The approach in amending primary legislation does not seek to impose further sanctions on businesses that operate within the current regulations, only to increase powers of the ISC to take action against those who breach current regulations. The aim of these measures is to provide more parity with the SRA when regulating immigration advisers, through improved powers to investigate and disrupt poor and illegal practice. The following options were considered:
  1. **Option 0:** 'Do nothing'. The ISC retains its current powers.
  2. **Option 1:** Introduce measures to provide the ISC with more powers to investigate regulated advisers and impose financial sanctions on both regulated and unregulated advisers.
  3. **Option 2:** Fund the ISC to do more prosecutions of unregulated advisers or cancellations of registrations of regulated advisers.
51. Consideration of Option 0 was discounted because of the issues presented by the disparity in regulatory regimes, particularly in light of action taken by the SRA in a case where it was apparent that the ISC would not have had the power to act in the same swift manner to stop high harm by ISC regulated advisers.
52. There were no further non-regulatory options available (beyond those already in place, described below) to achieve policy intent. The regulatory powers of the ISC are set out in legislation with regulatory levers in place to drive compliance. However, the current powers are not sufficient to deter poor behaviour.
53. The ISC has gone through a transformation programme and has reviewed its performance and strategies to expand its role in addressing the complex challenges in the UK's immigration landscape. There is a range of regulatory activity which they undertake to promote best practice and act as a deterrent.
54. In relation to the specific measures, the ISC has already made various attempts to address the problems caused but without sufficient measurable success, including formal meetings with regulated advisers to address breaches of codes, informal requests for restitution of fees from unregulated advisers, and made formal requests at court for refunds/compensation. The ISC has introduced new initiatives to facilitate more complaints, engaging with community groups and creating an online portal for anonymous complaints. The ISC has revised the Code of Standards for regulated advisers and communicated the importance of regulated advice through various channels, including press releases and published guidance.
55. The ISC also works closely with Home Office, Ministry of Justice and other legal regulators, sharing information on activity of regulated and unregulated advisers.
56. With the preferred option (Option 1), the intention is to enable the powers to regulate and impose financial sanctions, including returning of fees and payment of compensation into primary legislation, then engage with the sector on the level of fines to better understand the impact this will bring on advisers, before making decisions on the level of fines to be brought in with secondary legislation. This will enable greater understanding of the impacts on individual businesses

57. The intention is to engage on the level of the fines ahead of the framework being developed. The mechanism for engagement within the sector on implementation of the powers will be designed iteratively by the ISC as the frameworks and guidance are developed.

## 6. Description of shortlisted policy options carried forward

58. The long list of options has been assessed against the following critical success factors, in line with Green Book guidance:

- Strategic fit: how well the option provides holistic fit and synergy with other strategies, programmes and projects.
- Potential value for money: how well the option optimises social value in terms of potential costs, benefits and risks.
- Potential affordability: how well the option can be financed from available funds.
- Potential achievability: how well the option is likely to be delivered given an organisation’s ability to respond to the changes required.

	Option 0	Option 1 (preferred)	Option 2
Strategic fit	Red	Green	Amber
Potential value for money	Red	Green	Red
Potential affordability	Green	Green	Red
Potential achievability	Green	Green	Red

59. The existing model (Option 0) does not achieve the strategic aims of having a range of options to act as a deterrent short of cancellation of registration or prosecution and has led to a model where there are high rewards for low risk in providing poor or illegal advice.

60. When assessed against potential affordability, Option 2 was considered to be prohibitively expensive and would take considerable resources to achieve. The ISC is funded by the Home Office through Grant in Aid, funding them to pursue further investigations would fall to government resources. The costs of taking investigations through prosecution would also have a cost to the justice system. The ISC have calculated the legal costs alone of each prosecution to be approximately £14,000 per case (noting this calculation also does not include the staffing costs for each investigation).

61. When assessing Option 2 in terms of potential achievability it would not address the policy objectives of providing a range of sanctions to act as a greater deterrent. This approach also does not fit with the strategic aims in bringing parity with other regulators.

In addition, there is a real risk this would not deliver the desired aims. In some cases, prosecution of unregulated advisers or cancellation of regulated advisers is not appropriate or achievable because of e.g. the lack of evidence available. Such action would be better served from a lesser sanction, such as the measure under Option 1.

62. The following options were shortlisted:

- **Option 0:** 'Do nothing'. The ISC retains its current powers.
- **Option 1:** Introduce measures to provide the ISC with more powers to investigate regulated immigration advisers and impose financial sanctions on both regulated and unregulated immigration advisers.

63. **Option 1 is the government's preferred option.**

64. Assessment of the options led to a decision that Option 1, to introduce measures to provide the ISC with more powers to regulate and impose financial sanctions, was the option that best addressed the SMART policy objectives.

65. Option 1 would provide parity in powers between the ISC and the SRA to investigate and disrupt both poor quality advice and facilitation of abuse of the immigration system. It would enable greater range of sanctions for both regulated and unregulated advisers and enable greater consistency across the regulator sector.

66. It would deliver better value for money for the ISC, with less cost to disrupt activity, either through earlier intervention or by delivering options for disruptions even in cases which fall short of what is required for prosecution. . It would also disrupt the business model of high volume, low risk for those seeking to operate outside of regulation, by removing financial incentives and increasing the likelihood of sanctions.

### **Expected impacts of preferred option**

67. The fining powers will act as a sanction, reducing the gap between number of complaints, inspections and investigations through enhancing ISC's ability to deal with poor or illegal advice. Financial sanctions will also act as a deterrent for both regulated and unregulated advisers. It will enable faster disruption action to be taken, reducing harm to the advice seeker. It will lead to a reduction in repeat offences by low level/mid-level offenders. Earlier disruption will be less resource intensive for the ISC than taking a case through to prosecution. It will lead to a reduction in the breaches of Commissioner codes and enable more advisers to improve their standards..

68. New powers to gather information through compelling cooperation with investigations will make the ISC able to more effectively determine if regulated firms are acting competently and in a fit manner. Action taken to remove bad actors from the sector will have a positive effect on the credibility of the ISC as a regulator and enable improved standards of advice benefiting the regulated sector.

### **Scale of impact on business/context**

69. As of the 31 March 2024 the ISC regulated 1,990 organisations and 3,907 advisers. Organisations are split into those who charge fees for their immigration advice, and those who do not charge a fee. Those who do not charge a fee for advice currently have the ISC registration fee waived by the Commissioner.

70. Organisations registered with the ISC are authorised to provide advice at one of three levels, as described at evidence section B paragraph 28 footnote 22 below. If an

organisation has advisers working at different levels, they are considered as an organisation operating at the highest level (for fee charging purposes). The majority of organisations have less than five advisers working for them.

71. In 2023/2024, 79 audits were conducted. The findings from these audits demonstrate common issues were found in file keeping and client care, while more serious breaches which might be subject to a fine were found in 7 cases. In this year, 52 complaint investigations were completed, with 31 substantiated for a breach of the code. While some of these breaches related to minor non-compliances, others may have been suitable for a fine.<sup>12</sup>

## **Impact on businesses**

72. Overall, it is judged that the impact on business of the preferred option will be small and is only intended to impact those businesses operating in breach of current legal regulations.
73. The Home Office does not intend or expect that these measures will mean that legitimate businesses who operate within their legal and regulatory parameters should experience any disruption to their business. There should not be an impact on legitimate business on the financial sanctions, they are about enforcing existing regulation. There should also not be an impact on legitimate business who are compliant from an increased range of investigatory powers; they are about regulatory action to investigate complaints to ensure compliance with the regulatory regime.
74. Businesses would need to spend some time in ensuring they are aware of changes to the legislation, including changes to guidance. Evidence based section E paragraph 72 below set out the estimated familiarisation costs of this measure. The guidance, codes of conduct and regulations for advisers regulated by the IAA is already published for current processes.<sup>13</sup> Regulated advisers are required to comply with the Code of Standards, at registration and continued registration they are required to demonstrate how their organisations and advisers are fit and competent to provide immigration advice. These measures are about enhancing the ISC's ability to enforce existing regulation, so compliant businesses will just need to ensure they continue to be compliant with existing rules. There will be costs of familiarisation to changes to the ISC's investigation powers and powers to impose financial sanctions.
75. As set out in the tables below in evidence base section H paragraph 81, the majority of regulated organisations have less than five advisers. These measures are likely to mainly affect small businesses. The anticipated use of these powers is going to be small, and would only affect those who were suspected of, or had breached the Code of Standards, or given advice illegally. Any impact is proportionate to the desired outcomes.
76. Small and Micro Businesses (SMBs) will not be exempt from this regulation or legislative change. In order to enforce compliance with the Commissioner's Code, it is imperative

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<sup>12</sup> OISC Annual Report and Accounts 2023/24:

[https://assets.publishing.service.gov.uk/media/679b57c2f2c688b4b630eaf3/Annual\\_Report\\_and\\_Accounts\\_2023-2024.pdf](https://assets.publishing.service.gov.uk/media/679b57c2f2c688b4b630eaf3/Annual_Report_and_Accounts_2023-2024.pdf)

<sup>13</sup> [Resources for regulated organisations - GOV.UK: https://www.gov.uk/government/collections/guidance-notes-for-regulated-immigration-advisers](https://www.gov.uk/government/collections/guidance-notes-for-regulated-immigration-advisers)

that all providers of immigration advice are held to the same standard regardless of business size. It can be assumed that there would be no disproportionate burden on SMBs acting in compliance with the regulation, however an SMB acting in breach of the regulation could face a fine which may have a relatively larger impact on business finances compared to a similar fine imposed on a larger business.

## 7. Regulatory scorecard for preferred option

Please provide quantitative estimates and qualitative descriptions of impacts under each heading in the following sections. The right-hand column for directional ratings should be based on the description of impact and the sign of the suggested indicator (NPV, NPSV, all impacts): **Green** – positive impact, **red** – negative impact, **amber** – neutral or negligible impact, **blue** – uncertain impact. Please use the colours in the examples shown below, as these are suitable accessible colours. Please see BRF guidance technical annex for definitions.

### Part A: Overall and stakeholder impacts

<b>(1) Overall impacts on total welfare</b>		<b>Directional rating</b>
		<b>Note: Below are examples only</b>
<b>Description of overall expected impact</b>	The intended impact of this regulation is to improve the quality of immigration advice. This will have an overall positive impact on both individuals using providers of advice and the Home Office receiving applications. Action to remove those who provide poor or unregulated advice will have a positive impact on the regulated immigration advice sector by driving up standards.	<b>Positive</b>  <b>Based on all impacts (incl. non-monetised)</b>
<b>Monetised impacts</b>	The only monetised impact of this measure is familiarisation costs, resulting in a negative NPSV.	<b>Negative</b>  <b>Based on likely £NPSV</b>
<b>Non-monetised impacts</b>	It is potential that this regulation will deter providers from operating in breach of the Commissioners Codes, which will improve the quality of immigration advice.	<b>Positive</b>
<b>Any significant or adverse distributional impacts?</b>	No	<b>Neutral</b>

## (2) Expected impacts on businesses

<b>Description of overall business impact</b>	It is uncertain how many businesses currently operate without complying with regulation.. All businesses would need to spend some time in ensuring they are aware of the legislative change, but this impact is estimated to be small. There should be no disproportionate impact on small and micro businesses.	<b>Uncertain</b>
<b>Monetised impacts</b>	The only monetised impact is the familiarisation costs.	<b>Based on likely business £NPV</b>
<b>Non-monetised impacts</b>	This regulation will encourage better practice among providers of immigration advice.	<b>Positive</b>
<b>Any significant or adverse distributional impacts?</b>	No	<b>Neutral</b>

## (3) Expected impacts on households

<b>Description of overall household impact</b>	There are limited expected impacts on households.	<b>Neutral</b>
<b>Monetised impacts</b>	There are no monetised impacts on households	<b>Neutral</b> <b>Based on likely household £NPV</b>
<b>Non-monetised impacts</b>	Improved regulation powers could lead to improved standards and availability of immigration advice for households.	<b>Neutral</b>
<b>Any significant or adverse distributional impacts?</b>	No	<b>Neutral</b>

## Part B: Impacts on wider government priorities

Category	Description of impact	Directional rating
<p><b>Business environment:</b></p> <p>Does the measure impact on the ease of doing business in the UK?</p>	<p>This regulation could impose a barrier to entry for the market of immigration advice if businesses feel that following regulations would not be worth operation.</p>	<p><b>May work against</b></p>
<p><b>International Considerations:</b></p> <p>Does the measure support international trade and investment?</p>	<p>There is no expected impact on international trade and investment</p>	<p><b>Neutral</b></p>
<p><b>Natural capital and Decarbonisation:</b></p> <p>Does the measure support commitments to improve the environment and decarbonise?</p>	<p>There is no expected environmental impact of this regulation</p>	<p><b>Neutral</b></p>

## 8. Monitoring and evaluation of preferred option

77. The Home Office will monitor and evaluate the measures in the Border Security and Asylum Bill in relation to the Immigration Services Commissioner. It will establish appropriate monitoring and evaluation strategies for each of the measures; the approach may differ for different measures.
78. The ISC routinely collect data on their activity, such as inspections and investigations completed, outcomes of these, and income raised through regulation applications. This data is regularly monitored by the Home Office and published annually in the ISC annual report<sup>14</sup>. The Home Office will continue to work collaboratively with the IAA to ensure that appropriate data is collected on the use of the new powers and levels of the charges and fines derived from these extended powers. It will also monitor data on the number of appeals submitted to the First Tier Tribunal in relation to relevant decisions by the Commissioner.
79. The Home Office will monitor implementation over an initial 24 months and will then undertake a review of the impact on the immigration advice sector of these powers, the effectiveness and appropriateness of their use as well as reviewing the levels of the charges and fines derived from these powers.
80. The Home Office will monitor the frequency of use of the new powers, including number of times they have imposed a financial sanction or ordered compensation, how many times they have compelled cooperation by a former adviser and instances of use of immediate suspension. This will be compared against numbers of complaints investigated with a measurable sanction on the adviser (both regulated and unregulated) as an outcome.
81. It could be possible to use this data to evidence whether there has been a deterrent effect on businesses to encourage compliance with the regulation, such as a low level of fines being charged in a consistent sample size of investigations, or a reduction in complaints about advisers. This will need to be evaluated whilst cognisant of the potential impacts of the option of refunds/compensation resulting in an increase in the number of complaints against poor advice. This may entail engaging with those who have made a complaint, through way of feedback surveys, to ascertain their motivations for registering a complaint.

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<sup>14</sup> OISC Annual Report and Account 2022/2023

[https://assets.publishing.service.gov.uk/media/6602c56ef1d3a09b1f32acb9/OISC\\_Annual\\_Report\\_and\\_Accounts\\_2022-23\\_certified.pdf](https://assets.publishing.service.gov.uk/media/6602c56ef1d3a09b1f32acb9/OISC_Annual_Report_and_Accounts_2022-23_certified.pdf)

## **9. Minimising administrative and compliance costs for preferred option**

82. Businesses complying with the regulation should face no administrative or compliance costs. Those who are regulated by the ISC are required to demonstrate their fitness and competence to comply with the ISC code of standards when they are inspected, and when they are applying for registration or continued registration.
83. Businesses could face familiarisation costs to understand the legislative change that this measure brings and the risk of financial sanction if they fail to comply with regulation. Guidance for regulated advisers and other stakeholders will be provided on these measures.

## **10. Main assumptions / sensitivities and economic / analytical risks**

84. There is an analytical risk that the proportion of regulated organisations which could now be found to be operating in breach of the regulation is higher than currently estimated. This would mean the impacts of this amendment have been underestimated and there could be a larger impact to the industry of immigration advice and therefore a potential reduction in the availability of advice. However as shown in section H below, given the limited number of firms operating in this market, it is unlikely that breaches to the regulation will be widespread. This measure intends to improve the quality of advice, therefore if a substantial number of firms ceased to operate because they were operating in breach of the regulation, the quality of advice given would rise on average. It is also possible that legitimate firms continuing to operate could take the business of those firms who have been suspended or choose to leave the market.
85. The analytical uncertainties of behavioural change due to this amendment have been detailed in evidence base section H paragraphs 89 and 90 below.
86. The only monetised impact is the familiarisation costs which have a range applied and are sufficiently small that it is judged optimism bias is not necessary.

# Declaration

Department:

Home Office

Contact details for enquiries:

[BSCBillTeam@homeoffice.gov.uk](mailto:BSCBillTeam@homeoffice.gov.uk)

Minister responsible:

Minister for Migration and Citizenship- Seema Malhotra MP

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:

A handwritten signature in blue ink that reads "Seema Malhotra". The signature is written in a cursive style with a horizontal line underlining the name.

Date:

07/05/2025

## Summary: Analysis and evidence

For Final / Enactment Stage Impact Assessment, please finalise these sections including the full evidence base. For a Consultation Stage Impact Assessment, these sections can be in less detail with evidence gaps highlighted.

Price base year:

2025/26

PV base year:

2025/26

This table may be reformatted provided the side-by-side comparison of options is retained		0. Do nothing (baseline)	1. Introduce measures to provide the ISC with more powers to investigate regulated immigration advisers and impose financial sanctions on both regulated and unregulated immigration advisers.
<b>Costs (£m)</b>	Low	0	£0.002
	High	0	£0.017
	<b>Best</b>	0	£0.054
(Distinguish between setup and ongoing costs, as well as private/public costs)			
<b>Benefits (£m)</b>	Low	0	0
	High	0	0
	<b>Best</b>	0	0
(Distinguish between setup and ongoing benefits, as well as private/public benefits)			
<b>Net present social value (£m)</b>	Low	0	0-£0.002
	High	0	0-£0.017
	<b>Best</b>	0	-£0.054

This table may be reformatted provided the side-by-side comparison of options is retained	<b>0. Do Nothing</b>	<b>1. Introduce measures to provide the ISC with more powers to investigate regulated immigration advisers and impose financial sanctions on both regulated and unregulated immigration advisers.</b>
<b>Public sector financial costs</b> (with brief description, including ranges)	0	0
<b>Significant un-quantified benefits and costs</b> (description, with scale where possible)	...	. The intended outcome of this measure resulting in better quality immigration advice is a non-monetised benefit.
<b>Key risks</b> (and risk costs, and optimism bias, where relevant)	...	...
<b>Results of sensitivity analysis</b>	N/A	N/A

# Evidence base

## A. Strategic objective and overview

### Strategic objective

1. The overarching objective of this measure is to significantly enhance the ability of the ISC to enforce the existing regulation immigration advice. This will safeguard the integrity of the immigration system, protect advice seekers, and improve the quality of applications received by the Home Office. This will strengthen the wider immigration and asylum system, including protecting it against abuse, in turn rebuilding public confidence in the UK migration and borders system

### Background

2. The ISC assesses those who provide immigration advice, who are not regulated by other legal bodies, to ensure they are fit and competent to provide immigration advice and services by inspecting the organisations and investigating complaints. They also enforce the regulatory regime by investigating and, where appropriate, prosecuting those providing immigration advice illegally. The work of the ISC protects the vulnerable from the risks and dangers of illegal advice or poor service and works to improve the quality of advice.
3. The powers for the ISC to regulate immigration services providers comes from the IAA 1999, as amended by the Nationality, Immigration and Asylum Act 2002 and the Immigration Act 2014.
4. The current range of available sanctions for registered advisers to the ISC is limited to removal of registration, with little ability to take further action against registered advisers to act as a deterrent on poor behaviour, or to improve standards of behaviour. This means that the ISC is not in the same position as other regulators, particularly the SRA, in using sanctions against its registered advisers.
5. The SRA regulate solicitors, include those who provide immigration advice. They have a greater range of powers than the ISC to assure compliance and improve standards, including the power to impose financial sanctions, a mechanism to compensate victims of poor advice, to compel cooperation with their investigations, to apply restrictions to practising certificates to suspend activity whilst investigations are carried out.
6. It is essential that the ISC as a regulator has the tools to disrupt poor and illegal practice, and that it has powers aligned to other legal regulators to minimise the harm caused by disparity in the regimes. Non-legislative measures have already been pursued by the ISC but with limited success and the only option remaining is to amend the ISC's powers in legislation. These proposed legislative measures are an extension of existing regulation and are designed to give parity with other regulators, to reduce the effects of those who may seek to exploit any disparity, and to strengthen the ISC as a regulator.
7. The government propose to:
  - a. legislate to extend the sanction powers of the ISC to improve powers to disrupt poor and illegal practice by:
    - introducing financial sanctions in addition to existing powers of prosecution for unregulated advisers whilst retaining the ability to prosecute;
    - imposing financial sanctions and fixed penalties on those providing legal advice who are regulated by the ISC should they fail to comply with the standards set out in the code or legislative requirements; and creating a civil mechanism for fee refund/compensation (restitution) to be given to victims of poor practice by regulated and unregulated advisers.

- b. legislate to extend the ISC powers to investigate poor and illegal practice and to allow for measures aligned with the powers of the SRA, namely:
  - compelling cooperation of advisers previously regulated by the ISC with an investigation of a complaint made related to the provision of immigration advice and services; and
  - giving power to immediately suspend an adviser from the scheme while investigation is underway which relates to serious fitness or competence issues.
8. The proposed measures for financial sanctions and immediate suspension will come with a right of appeal to the First Tier Tribunal, in line with current processes for sanctions from the Commissioner
9. The measures assessed in this document achieve the overarching objective to enhance the ability of the ISC to regulate immigration services, which will safeguard the integrity of the immigration system, protect advice seekers and improve the quality of applications received by the Home Office, strengthening the UK wider immigration and asylum system.

#### **Groups affected**

- Provider of immigration advice
- Advice seekers and their families
- Home Office

#### **Consultation**

10. There has been no public consultation on most of the measures proposed in the Bill.
11. A public consultation was undertaken by the previous Government on proposals to amend the structure of the fees charged to registered advisers from 12 March 2024 to 5 June 2024. The response to this consultation was published on 6 March 2025<sup>15</sup>
12. The level of the fines is yet to be established, and the intention is to engage the sector on impacts before deciding the level of the financial sanction.

### **B. Problem under consideration, with business as usual, and rationale for intervention**

13. Action taken by those who provide poor, or unregulated immigration advice has a detrimental effect on the smooth functioning of the immigration system. It is not possible to easily quantify this effect, as the Home Office are not able to measure the number of organisations providing bad advice or measure the exact impact it has on the system.
14. The vulnerable nature of advice seekers means they are susceptible to exploitation which may have an effect on irregular migration. Exploiting vulnerable advice seekers leads to poor immigration applications, causing delays and impacting on individuals' immigration status, resulting in potential destitution. Quality advice helps applicants make good quality applications, aiding Home Office decisions. It is clear that there is an ongoing need to regulate the sector, and for the ISC to continue to function. The successful outcomes in terms of numbers of interventions as demonstrated by the ISC within their annual report evidence this, along with the recent (yet unpublished) Cabinet Office Public Bodies Review.

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<sup>15</sup> <https://www.gov.uk/government/consultations/office-of-the-immigration-services-commissioners-fee-structure>

15. The work of the Professional Enablers Disruption Team within the Home Office which was established in January 2024 has concentrated on developing referrals to regulators to better deal with abuse within the immigration system. They look not only at the ISC but work with a variety of regulators and law enforcement bodies. They have identified an increasing number of referrals.
16. The ISC receive referrals from the Home Office, as well as other government organisations such as the Courts, and through complaints from advice seekers. These referrals can include information about applicants who have been encouraged to make applications on unsuitable routes that are bound to fail, or late applications that could be designed to frustrate removal. Such applications lead to increased volumes of work which require Home Office caseworker time to consider, creating delays elsewhere in the immigration system. The vulnerable nature of advice seekers means that they are often exploited in trying to secure immigration status by those who feel they can profit from them. Good quality advice and services benefits the Home Office by assisting clients to accurately present their cases, allowing effective decision making.
17. Under the IAA 1999, as amended by the Nationality, Immigration and Asylum Act 2002<sup>16</sup> and the Immigration Act 2014<sup>17</sup> the ISC has powers to:
  - approve, limit, vary or refuse an application for registration;
  - inspect an organisation’s business activities;
  - cancel an organisation’s registration;
  - investigate complaints and sanction registered advisers;
  - lay a disciplinary charge against a regulated adviser;
  - prosecute for illegally providing (or advertising) immigration advice and/or services; reenter an adviser’s premises (with a warrant); and
  - seize an unlawful adviser’s records.
18. The ISC has a general duty to promote good practice by those who provide immigration advice or immigration services (section 83(3) of the IAA 1999). However, the ISC has limited powers to encourage compliance with its code which sets standards for those it regulates to have a duty to comply with.
19. Schedule 5 Part I of the IAA 1999<sup>18</sup> sets out the Commissioner may make rules regulating any aspect of the professional practice, conduct or discipline of registered persons (or those acting on behalf of registered persons) in connection with immigration advice and services. Schedule 5, Part 3 sets out that the Commissioner must prepare and issue a code of standards setting out standards of conduct. The Commissioner’s codes of conduct are published on the ISC website<sup>19</sup>.
20. The ISC has powers under sections 91 and 92B of the IAA 1999<sup>20</sup> to take enforcement action against those operating outside of the legal framework. The ISC is the only regulator with the power to take enforcement action against those providing advice whilst not qualified to do so. This part of their remit gives it primacy with other enforcement agencies, to investigate and take

<sup>16</sup> <http://www.legislation.gov.uk/ukpga/2002/41/contents>

<sup>17</sup> <http://www.legislation.gov.uk/ukpga/2014/22/contents/enacted>

<sup>18</sup> Immigration and Asylum Act 1999, Schedule 5: <https://www.legislation.gov.uk/ukpga/1999/33/schedule/5>

<sup>19</sup> Office of the Immigration Services Commissioner Code of Standards (updated September 2024):

[https://assets.publishing.service.gov.uk/media/6628d99adb4b9f0448a7e572/OISC\\_Code\\_of\\_Standards\\_2024.pdf](https://assets.publishing.service.gov.uk/media/6628d99adb4b9f0448a7e572/OISC_Code_of_Standards_2024.pdf)

<sup>20</sup> Immigration and Asylum Act 1999, section 91: <https://www.legislation.gov.uk/ukpga/1999/33/section/91>

Immigration and Asylum Act 1999, section 92: <https://www.legislation.gov.uk/ukpga/1999/33/section/92>

enforcement action against those providing unauthorised immigration advice. In this way, their work supports both the government's priorities with regards to legal migration and in preventing illegal migration, including preventing people making dangerous journeys leading to risk to life by taking action against those who breach legal requirements when providing advice.

## **Financial Sanctions**

21. The Home Office believes that ISC would benefit from having a greater range of powers that it can exercise against organisations as now, short of cancelling a person's registration, its powers are limited. In addition to having parity with the SRA, the benefit of an ability to fine advisers or organisations for fitness or competence issues which fall short of the threshold for cancellation would strengthen the ISC's hand in requiring organisations to act following a complaint or inspection. The Home Office determines that it would be a strong tool in encouraging regulatory compliance and quality in advice provision and that it would deter repeat offending and wider misconduct among those it regulates.
22. For the unregulated sector there are limited options for action that can be taken by the ISC against section 91 and section 92B offences short of prosecution. This is costly and overly reliant on willing witnesses which results in no penalty for some offenders. The lack of sanctions short of prosecution do cause a significant problem to the ISC effectiveness as a regulator. A power for the ISC to fine those giving advice without being registered would provide an additional disruption and deterrent, reducing levels of illegal advice in the sector and protecting vulnerable advice seekers. Without financial sanctions for advisers, it is possible to make significant profits from unlawful activity. Where prosecution is not possible, due to the threshold or resources, it is important to have a system where there is no financial incentive to continue to engage in such activity.

## **Fees, Refunds and Compensation**

23. Victims of poor or unregulated advice often suffer significant financial hardship as a result of the poor advice received and at present there is no mechanism for these individuals to receive restitution. In addition, the lack of ISC powers to enforce restitution weakens the incentive for individuals to complain to the ISC. A power to enforce repayment of fees and compensation would give individuals the restitution needed and provide an incentive for the ISC to be informed about poor or illegal advice, allowing the ISC to take action to improve the quality of advice in the sector. This is an area where the SRA have an ability to enforce refunds and pay compensation. This disparity currently puts the advice seekers at a disadvantage if they choose an ISC regulated organisation.

## **Immediate Suspension**

24. The ISC does not have the power to immediately suspend advisers where there are significant concerns of harm to advice seekers. If the ISC make a decision to cancel a registration, the suspension does not come into effect for the period in which the organisation can appeal, as set out in the First Tier Tribunal regulations.<sup>21</sup> This means that there is the potential for the person to continue to facilitate abuse of the immigration system or adversely affect advice seekers during that period. In such circumstances the lack of proactive response by the ISC means that there is a lack of protection of vulnerable advice seekers, but also this causes damage to the reputation of the ISC as a regulator, where one might expect a regulator to

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<sup>21</sup>Appeal a decision on your registration as an immigration adviser - GOV.UK <https://www.gov.uk/guidance/appeal-a-decision-on-your-registration-as-an-immigration-adviser>

intervene. The BSAI Bill will create a power to enable suspension to come into immediate effect in circumstances where there are significant concerns of harm to advice seekers. This will provide parity with SRA powers who are able to intervene more swiftly.

25. The ISC do not keep or publish statistics on the number of times they have used a power that they do not yet have. However, the case studies below look at times when a power would have been useful, coupled with estimates on the number of times a power or sanction would be used.

## Financial Sanctions

26. For regulated advisers, the ISC estimate there are approximately 130 matters a year which are investigated through audits and complaints. Of those, it is estimated on 23 occasions a fine would be an appropriate sanction.
27. **Case Study:** A newly registered organisation was found to have worked on one case above their authorised registration level<sup>22</sup>, putting advice seekers at a risk of a lack of knowledge and competence in handling their case. The ISC has no available sanction for this first-time early offence, with the only options available being to cancel the organisation from the scheme or lay the finding on file. An ability to fine would penalise this activity and provide an incentive to improve, while also sending a signal that there is a proactive regulator who will take appropriate action when needed.
28. For unregulated advisers the ISC estimate they encounter approximately 10 cases a year where prosecution is unlikely due to no live witnesses, 6 cases a year where witnesses drop out, and 24 cases a year where unregulated advisers are found to be advertising advice on websites. All of these cases could be addressed with a fine in future. It is possible the number of fines could increase as the ISC's enforcement activity grows; conversely the deterrent effect of the fines may result in the number of fines being issued reducing.
29. **Case Study:** The ISC received evidence that of an individual had provided unregulated advice, a criminal offence, for a period of eight years, with significant exploitation of vulnerable individuals. Two key witnesses failed to provide witness statements, meaning the likelihood of success in a prosecution was low. The ISC had no option except to issue a warning to the individual without any penalty or sanction for the illegal activity. The ability to fine would have provided a financial consequence and sent the signal of a proactive regulator able to take action against illegal advice-provision, potentially disrupting the activity and protecting other advice seekers from exploitation.
30. **Case Study:** An unregulated immigration adviser was advertising immigration advice online, a criminal offence. Screenshots of the website provided clear evidence of illegal activity. Without any power to fine, the only option available to the ISC was to contact the adviser, explain the offence and ask them to stop advertising immigration advice. At £14,000 per prosecution, taking forward a prosecution would have represented a disproportionate cost to the ISC, but in the absence of fining powers no other penalty or signal of wrongdoing was available. An ability to

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<sup>22</sup> Organisations registered with the Immigration Advice Authority are authorised to operate at one of three levels:

- **Level 1:** basic immigration advice within the Immigration Rules, including limited services to asylum applicants. No substantive protection work is permitted. Work for asylum seekers or failed asylum seekers is limited to one-off assistance covering limited services, such as notifying the Home Office of a change of address or travel document applications for someone granted Humanitarian Protection.
- **Level 2:** more complex casework, including applications outside the Immigration Rules and advice on substantive asylum applications but does not include presenting appeals in the Immigration and Asylum Chamber.
- **Level 3:** can represent at appeals and bail hearings before an immigration judge.

fine individuals in this situation would provide a financial consequence to illegal activity and send a signal of a proactive regulator with appropriate powers to take action.

## Fees Refunds and Compensation

31. For fees refunds and compensation from regulated advisers during 2023/24 the ISC secured £11,886 refunds for complainants, through negotiation with regulated advisers. The lack of incentive to complain means the ISC is less aware than it could be of quality issues within regulated advisers.
32. **Case study:** The ISC investigated a complaint against the sole adviser at a limited company. The complaint was determined, and the Commissioner recommended that due to the breaches of the Code of Standards the organisation repay a total of £2,898.00 to the complainant, which is the total of the professional and disbursement fees they had paid. The Commissioner has no power to enforce the repayment of a refund, this money has not been repaid. During the investigation the organisation's regulation was cancelled as it did not apply to renew its continued registration. A power to require repayment of fees and compensation would have provided restitution to the complainant.
33. For compensation or fees from unregulated advisers the ISC estimate approximately 10 instances a year out of 25 investigations where this power would be useful.
34. **Case Study:** In Birmingham, three individuals (two Pakistani and one Indian nationals) paid a total of £16,000 to an unregulated immigration adviser. Due to the ISC's lack of authority to enforce refunds or compensation, the victims received no repayment. A power to require repayment of fees and compensation would have provided restitution for the individuals involved and give an incentive to complain to the ISC, improving the ISC's knowledge of illegal advice.
35. **Case Study:** The ISC successfully prosecuted an adviser giving advice illegally without being regulated, including significant fraud charges. The Judge gave a suspended sentence and no reparation to the victim. If the ISC had a power to require repayment of fees and compensation, this would have been a significantly improved outcome for the advice seeker and given an incentive for other advice seekers to complain to the ISC.

## Compelling cooperation

36. The ISC estimate that the number of cases where a lack of power to compel cooperation causes difficulty in determining a complaint is about six per year.
37. **Case Study:** A number of complaints were received against a regulated firm which the organisation failed to respond to, despite repeated requests. Whilst investigating the complaints, the organisation failed to apply for continued registration and its regulation was cancelled. The complaints were determined on the limited information available to the Commissioner. Without the organisations response the Commissioner was unable to make findings around key areas that could inform future regulatory decisions. Compelling cooperation would mean the organisation would have to take responsibly to respond to the issues raised in the complaints and face a fine if they failed to do so.

## Immediate Suspension

38. The ISC estimate that in recent years, there would be three to four instances of situations which would have required immediate suspension of a regulated adviser per year.
39. The work of the Professional Enablers Disruption Team within the Home Office which was established in January 2024 has concentrated on developing referrals to regulators to better

deal with abuse within the immigration system. They look not only at the ISC by work with a variety of regulators and law enforcement bodies. They have identified an increasing number of referrals.

40. The ISC receive referrals from the Home Office, as well as other government organisations such as the Courts, and through complaints from advice seekers. These referrals include information about applicants who have been encouraged to make applications on unsuitable routes that are bound to fail, or late applications that could be designed to frustrate removal. Such applications lead to increased volumes of work which require Home Office caseworker time to consider, creating delays elsewhere in the immigration system. The vulnerable nature of advice seekers means that they are often exploited in trying to secure immigration status by those who feel they can profit from them. Good quality advice and services benefits the Home Office by assisting clients to accurately present their cases, allowing effective decision making.
41. In their Annual Report 2023/24 the ISC reported receiving a record 922 referrals regarding poor quality and/or illegal immigration advice and service provision, compared with 293 referrals in 2022/23<sup>23</sup>. This increase demonstrates that this issue is something that requires further action by regulators, particularly because of the impact on the immigration system as a whole. As set out in paragraph 6 above, there is also a need to act to address disparities in the regulatory system, which became clearer following an investigation by the SRA in Summer 2023, where had the regulator been the ISC, they would have not been able to act in the same way.

## C. Policy objective

42. The proposals create legislation which will significantly enhance the ability of the ISC to enforce the existing regulation immigration advice. This will safeguard the integrity of the immigration system, protect advice seekers, and improve the quality of applications received by the Home Office. This will strengthen the wider immigration and asylum system, including protecting it against abuse, in turn rebuilding public confidence in the UK migration and borders system

### Sub-objectives

- Improve the ability of the ISC to investigate poor and illegal practice, including facilitation of abuse of the immigration system, by compelling co-operation with investigations and allowing the ISC to suspend advisers while ISC investigates where high-risk activity is suspected.
  - Improve the ability of the ISC to disrupt poor and illegal practice, including facilitation of abuse of the immigration system, by introducing financial sanctions and requiring the repayment of fees and compensation to advice seekers.
  - Give the ISC parity with the powers of other regulators such as the Solicitors Regulation Authority, mitigating the damage caused by disparity in the regimes and equalising the protection for advice seekers.
43. Introducing extended powers to the ISC, giving greater parity to those of the SRA, including financial sanctions for non-compliance, aims to strengthen the regulatory regime and improve

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<sup>23</sup> OISC Annual Report and Accounts 2023/24 Page 22  
[https://assets.publishing.service.gov.uk/media/679b57c2f2c688b4b630eaf3/Annual\\_Report\\_and\\_Accounts\\_2023-2024.pdf](https://assets.publishing.service.gov.uk/media/679b57c2f2c688b4b630eaf3/Annual_Report_and_Accounts_2023-2024.pdf)

the quality of advice and services. These powers would enable the ISC to fine advisers or organisations for fitness or competence issues, encouraging regulatory compliance and deterring repeat offending. Financial sanctions for persistent lower-level offences would ensure better applications and advice standards. Additionally, civil financial sanctions for unregulated advisers would act as a deterrent, reducing illegal advice provision. The ability to compel restitution for victims of poor or illegal advice would create better outcomes and incentivise complaints, enhancing the ISC's regulatory and enforcement activities. The measures within the bill to improve the powers to investigate poor and illegal practice, such as compelling advisers to cooperate, and the power to immediately suspend advisers all allow the ISC to be more effective in gathering information, protecting clients, and better deal with poor standards of immigration advice.

44. Measures within the Bill are designed to ensure:

- those who seek to operate outside of regulation are deterred from doing so because IAA has extended powers, and act as a vital deterrent to those who seek to operate outside of regulation.
- greater compliance with the regulatory regime by registered advisers and driving up standards of advice, with a range of sanctions which act to ensure compliance of regulated advisers.
- parity between regulators to allow IAA to tackle those who seek to abuse the existing gaps, and so that they are able to respond in a comparable way to other regulators.
- Removal of the incentive of any financial gains made by those providing poor or unregulated advice.
- Advice seekers who have received poor immigration advice are aware of how to make complaints and to whom, and awareness of the general public of the importance of seeking good, regulated immigration advice; and an improved public confidence in the immigration advice sector, with a focus on ensuring good standards of advice couple with appropriate measures to tackle those who seek to abuse the immigration system

45. **Other measures within the Bill in relation to the ISC include:**

- Reduce the risk of a gap in regulatory oversight if the ISC becomes unable to fulfil their duties. [Governance]
- Create greater flexibility in the charging regime of the ISC in order to facilitate cost recovery and enable greater operational flexibility. [Charging]
- Improve the flexibility by which different types of immigration advice can be brought in and out of regulatory oversight. [Relevant matters]
- Ensure individuals with prohibitions cannot provide immigration advice under the supervision of a regulated individual. [Supervision]

46. The intended outcomes and indicators of success for the interventions to improve the ability to investigate and disrupt include:

- those who seek to operate outside of regulation are deterred from doing so because the ISC has extended range of powers. This is not solely reliant on prosecution to act as a deterrent and also means that those who pose a real threat to advice seekers are prevented from doing so more swiftly;
- greater compliance with the regulatory regime by registered advisers and driving up standards of advice, with an increased range of sanctions which act to ensure compliance of regulated advisers;
- better identification of breaches leading to faster disruption action reducing the number of advice seekers harmed by poor advice;

- reduction in instances of repeat offences by low level and mid-level offenders where prosecution is not viable or is disproportionate;
  - earlier disruption meaning less resource intensive and costs to the ISC and government in terms of later stage investigations;
  - ensuring parity between regulators to allow the ISC to deal with those who seek to abuse the existing gaps, and so that they are able to respond in a comparable way to other regulators;
  - removing the incentive of any financial gains made by those providing poor or unregulated advice;
  - with the possibility of redress from fee refunds or compensation there will be an increased number of complaints made by advice seekers who have received poor immigration advice, and awareness among the general public of the importance of seeking good, regulated immigration advice;
  - improving public confidence in the immigration advice sector, with a focus on ensuring good standards of advice coupled with appropriate measures to deal with those who seek to abuse the immigration system;
  - increased vigilance on the regulated sector, with a reduction in breaches of ‘fitness’ codes following inspections and complaint investigations, and significant reduction in repeat findings of such breaches; and
47. The outcomes of the objectives will be measurable through comparison with existing levels of compliance with the ISC code of standards and investigations following complaints and inspections or audits for regulated advisers and through comparison with existing investigations, outcomes, and sanctions into complaints for unregulated advisers.
48. These measures will be achieved through a coherent implementation plan, involving engagement with the sector and development of appropriate frameworks, guidance and safeguards for each of the measures. The measures will be in place in line with the proposed implementation plan set out in part 8 by Autumn 2026.

## D. Description of options considered

49. The ISC’s regulatory powers come from the IAA 1999 as amended by the Nationality Immigration and Asylum Act 2002<sup>24</sup> and the Immigration Act 2014.<sup>25</sup> Currently the ISC can only cancel registration and lacks further deterrents against poor behaviour. This limits the ISC compared with the SRA, who has broader powers such as imposing financial sanctions, compensating victims compelling cooperation with investigations and intervening to stop high harm activity.
50. The approach does not seek to impose further sanctions on businesses that operate within the current regulations, only to increase powers of the ISC to take action against those who breach current regulations. The aim of these measures is to provide more parity with the SRA when regulating immigration advisers, through improved powers to investigate and disrupt poor and illegal practice. The following options were considered:
- **Option 0:** ‘Do nothing’. The ISC retains its current powers.

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<sup>24</sup> Nationality, Immigration and Asylum Act 2002: <https://www.legislation.gov.uk/ukpga/2002/41/contents>

<sup>25</sup> Immigration Act 2014: <https://www.legislation.gov.uk/ukpga/2014/22/contents/enacted>

- **Option 1:** Introduce measures to provide the ISC with more powers to investigate regulated advisers and impose financial sanctions on both regulated and unregulated advisers.
  - **Option 2:** Fund the ISC to do more prosecutions of unregulated advisers or cancellations of registrations of regulated advisers.
51. Consideration of Option 0 was discounted because of the issues presented by the disparity in regulatory regimes, particularly in light of action taken by the SRA in a case where it was apparent that the ISC would not have had the power to act in the same swift manner to stop high harm by ISC regulated advisers.
52. Further non-regulatory options were not considered. The regulatory powers of the ISC are set out in legislation. The ISC is a regulator of the provision of immigration advice, so regulatory levers are in place to ensure compliance with the regime.
53. Other possible levers to improve compliance and deter illegal activity are already in place. The ISC has gone through a transformation programme and has reviewed its performance and strategies to expand its role in addressing the complex challenges in the UK's immigration landscape. There is a range of regulatory activity which they undertake to promote best practice and act as a deterrent.
54. In relation to the specific measures, the ISC have already made various attempts to address the problems caused but without sufficient measurable success, including:
- a. Formal Meetings following audits with regulated advisers to explain breaches;
  - b. Made informal requests for restitution from unregulated advisers for compensation;
  - c. Introduced initiatives to facilitate and enable advice seekers to make complaints, including engagement with community groups and creation of an online portal which allows anonymous complaints;
  - d. Made requests at court for refunds/compensation to advice seekers;
  - e. Attempted to make requests to unregulated advisers for return of fees to their clients, but with no power to enforce they were mostly unsuccessful;
  - f. Attempted to make requests for regulated advisers to return fees where they have been warned their registration may be withheld;
  - g. Attempted to ask people to comply if they have left the scheme, but with the limited success;
  - h. Revised and introduced a new Code of Standards for all regulated advisers<sup>26</sup>;
  - i. communication activity by the ISC on the importance of being regulated to provide immigration advice and services and the risk of receiving unregulated advice<sup>27</sup>;
  - j. regular press releases on enforcement activity undertaken about unregulated activity<sup>28</sup>; and
  - k. published guidance on who needs to be regulated to provide immigration advice.<sup>29</sup>

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<sup>26</sup> <https://www.gov.uk/government/publications/oisc-code-of-standards-commissioners-rules-2012>

<sup>27</sup> <https://www.gov.uk/government/publications/risks-of-receiving-immigration-advice-from-an-unregulated-person/risks-of-unregulated-immigration-advice>

<sup>28</sup> <https://www.gov.uk/government/publications/list-of-prohibited-or-suspended-immigration-advisers/list-of-prohibited-or-suspended-immigration-advisers>

<sup>29</sup> <https://www.gov.uk/government/publications/regulations-that-immigration-advisers-must-follow--2/regulations-that-immigration-advisers-must-follow>

55. The ISC also works closely with Home Office, Ministry of Justice and other legal regulators, sharing information on activity of regulated and unregulated advisers.
56. With the preferred option (Option 1), the intention is to enable the powers to regulate and impose financial sanctions, including returning of fees and payment of compensation into primary legislation, then engage with the sector on the level of fines to better understand the impact this will bring on advisers. This would be done before making decisions on the level of fines to be brought in with secondary legislation. This will enable greater understanding of the impacts on individual businesses.
57. There has not been any public engagement with the immigration advice sector on the proposals, but there was a recent consultation on fees charged to immigration advisers. The intention is to engage on the level of the fines and fixed penalties ahead of the framework being developed. The mechanism for engagement within the sector on implementation of the powers will be designed iteratively by the ISC as the frameworks and guidance are developed.

### Summary and preferred option with description of implementation plan

58. The long list of options was assessed against the following critical success factors, in line with Green Book guidance:
  - Strategic fit: how well the option provides holistic fit and synergy with other strategies, programmes and projects.
  - Potential value for money: how well the option optimises social value in terms of potential costs, benefits and risks.
  - Potential affordability: how well the option can be financed from available funds.
  - Potential achievability: how well the option is likely to be delivered given an organisation’s ability to respond to the changes required.

	Option 0	Option 1 (preferred)	Option 2
Strategic fit	Red	Green	Amber
Potential value for money	Red	Green	Red
Potential affordability	Green	Green	Red
Potential achievability	Green	Green	Red

59. The existing model (Option 0) does not achieve the strategic aims of having a range of options to act as a deterrent short of cancellation of registration or prosecution. The lack of parity with the SRA in the current model limits the ability of the ISC for wide scale disruption activity. The existing model with the sanctions being cancellation or prosecution has led to a model where there are high rewards for low risk in providing poor or illegal advice, so does not act as a suitable deterrent.
60. When assessed against potential affordability, Option 2 was considered to be prohibitively expensive and would take considerable resources to achieve. The ISC is funded by the Home Office through Grant in Aid, funding them to pursue further investigations would fall to government resources. The costs of taking investigations through prosecution would also have a cost to the justice system as well as to the ISC. The ISC have calculated the cost of each prosecution to be approximately £14,000 per case for the legal costs (noting this calculation also does not include the staffing costs for each investigation).

61. When assessing Option 2 in terms of potential achievability it would also not address the policy objectives of providing a range of sanctions to act as a greater deterrent. This approach also does not fit with the strategic aims in bringing parity with other regulators. In addition, there is a real risk this would not deliver the desired aims because in some cases prosecution of unregulated advisers or cancellation of regulated advisers is not appropriate or achievable because of the lack of evidence available. Such action would better served from a lesser sanction, such as the measure under Option 1.
62. The following options are shortlisted:
- **Option 0:** 'Do nothing'. The ISC retains its current powers.
  - **Option 1:** Introduce measures to provide the ISC with more powers to investigate regulated immigration advisers and impose financial sanctions on both regulated and unregulated immigration advisers.
63. **Option 1 is the government's preferred option.**
64. Assessment of the options led to a decision that Option 1, to introduce measures to provide the ISC with more powers to regulate and impose financial sanctions, was the option that best addressed the SMART policy objectives.
65. This is because it would provide parity in powers between the ISC and the SRA to investigate and disrupt both poor quality advice and facilitation of abuse of the immigration system. It would enable greater range of sanctions for both regulated and unregulated advisers and enable greater consistency across the regulator sector.
66. It would deliver better value for money for the ISC, with less cost to disrupt activity, either through earlier intervention or by delivering options for disruptions even in cases which fall short of what is required for prosecution. It would also disrupt the business model of high volume, low risk for those seeking to operate outside of regulation, by removing financial incentives and increasing the likelihood of sanctions.

### **Implementation timescales**

67. It should be noted that the timescales are dependent on resource, the ISC have made a funding bid to the Home Office for additional staff and funding to implement the technical systems required for the powers.
68. Further policy and process development for implementation of powers will start in Autumn 2025, with engagement with sector on policy and process from November 2025 to March 2026. The intended plan and mechanism for sector engagement on the policy and process will be dependent of the nature of the new power. The ISC regularly engages with its registered advisers and the sector on a variety of matters.
69. Publishing frameworks and guidance for the new powers would take place in the Summer of 2026 and new powers to come into effect in Autumn 2026.
70. In addition to the increased capacity, the ISC will need to grow its capability in the following areas for implementation of the powers:
- a) Financial capability - more complex payments to the ISC including fining and compensation calculations.
  - b) Enforcement and debt recovery capability – for enforcement of fines
  - c) Rapid response capability – to ensure power to immediately suspend can be implemented.

## **E. NPSV: monetised and non-monetised costs and benefits of each shortlist option (including administrative burden)**

71. The only monetised cost is familiarisation costs to private sector firms operating in the immigration advice industry, with legal professionals and advisers having to familiarise themselves with the new powers of the IAA under this legislation.

Table X: Total Familiarisation Costs (£ millions, 2025/26 prices)

	Total Cost
Low	0.002
Central	0.017
High	0.054

72. As this is the only cost and there are no monetised benefits, the central BNPV and NPSV is - £0.017m. There is no or EANDCB
73. The intended outcome of this measure resulting in better quality immigration advice is a non-monetised benefit. This would impact both recipients of immigration advice being able to submit higher quality applications, and the Home Office potentially having a more efficient decision-making process upon the receipt of such applications.

### **Impact on small and micro-businesses**

74. Small and Micro Businesses (SMBs) will not be exempt from this regulation or legislative change. In order to enforce compliance with the Commissioner's Code, it is imperative that all providers of immigration advice are held to the same standard regardless of business size. It can be assumed that there would be no disproportionate burden on SMBs acting in compliance with the regulation, however an SMB acting in breach of the regulation could face a fine which may have a relatively larger impact on business finances compared to a similar fine imposed on a larger business.

## **F. Costs and benefits to business calculations**

75. As described in section E, the only monetised cost is familiarisation costs to businesses operating in the industry.

## **G. Costs and benefits to households' calculations**

76. There are no monetised costs or benefits to households as a result of this measure.

## **H. Business environment**

77. As of the 31 March 2024 the ISC regulated 1,990 organisations and 3,907 advisers. There is no available data on the turnover of immigration advice organisations registered with the ISC. Organisations are split into those who charge fees for their immigration advice, and those who do not charge a fee. Those who do not charge a fee for advice have the ISC registration fee waived by the Commissioner
78. Organisations registered with the ISC are authorised to provide advice at one of three levels, as described at above evidence base section B paragraph 28 footnote 22. If an organisation has advisers working at different levels, they are considered as an organisation operating at the highest level (for fee charging purposes). Citizen's Advice organisations are registered under a blanket level 1 organisation and are not required to pay regulation fees.
79. The majority of organisations have less than five advisers working for them.

**Table 1: Fee Charging organisations, number of advisers working at each advice level.**

Number of Advisers	Number of FC organisations with no level recorded	Level 1	Level 2	Level 3	Total
1	3	675	69	183	930
2	1	76	23	104	204
3	0	29	12	56	97
4	0	6	6	19	31
5	0	2	4	7	13
6	0	1	0	6	7
7	0	4	1	1	6
8	0	0	0	6	6
9	0	0	0	1	1
10	0	0	0	0	0
12	0	0	0	1	1
16	0	0	0	1	1
17	0	0	1	0	1
25	0	0	1	0	1
27	0	0	0	1	1
38	0	0	0	1	1
89	0	0	0	1	1
119	0	1	0	0	1
Total	4	794	117	388	1303

80. Of 1,303 fee charging organisations, 8 have more than 10 advisers. 99 per cent of fee charging organisations have under 10 advisers. 1,275 have up to five advisers – 97.8 per cent of total.

**Table 2: Non-Fee Charging Organisations, number of advisers working at each advice level**

Number of advisers	Number of NFC organisations with no level recorded	Level 1	Level 2	Level 3	Total
1	0	79	25	24	128
2	0	36	12	11	59
3	1	21	6	16	44
4	0	10	3	5	18
5	0	10	4	7	21
6	0	1	10	4	15
7	0	2	2	8	12
8	0	1	2	6	9
9	0	2	2	0	4
10	0	0	1	2	3
11	0	2	1	1	4
12	0	0	0	1	1
13	0	0	2	1	3
14	0	0	0	1	1
15	0	1	1	0	2
18	0	1	1	0	2
28	0	0	0	2	2
29	0	0	1	0	1
36	0	1	0	0	1
37	0	0	0	1	1
44	0	0	0	1	1
72	0	0	1	0	1
278	0	1	0	0	1
Total	1	168	74	91	334

81. Of the total 334 non-fee charging organisations registered with the IAA, 21 (0.6%) have more than 10 advisers. 313 non-fee charging organisations (93.7%) have 10 advisers or fewer and

86% (270) of all registered non-fee charging organisations have 5 or less advisers. This data does not include those working at Citizen’s Advice Level 1 (350 organisations) under a blanket registration, who are not subject to regulation fees.

**Table 3: Total number of organisations per number of advisers**

Number of advisers	Overall
1	1058
2	263
3	141
4	49
5	34
6	22
7	18
8	15
9	5
10	3
>10	29
Total Organisations	1637

82. The total number of organisations (Fee Charging plus Non-Fee charging) is 1,637. The total number of organisations with less than 10 advisers is 1,608 which means that 98 per cent of organisations have 10 advisers or fewer.
83. 79 audit inspections were completed in 2023/24. The most common findings at audit were failures in file keeping and client care. Within this area a failure to maintain a full record of interactions with clients was found on 22 audits and a failure to include sufficient detail in client care letters being found on 19 audits.
84. Serious breaches were only found on small numbers of audits including competence (4), misleading (1), genuineness of documents (1) and unauthorised advisers (1). It is likely that these seven audits would be those who might be fined, if the more serious action to cancel registration was not taken.
85. 52 complaints against regulated organisations were completed during 2023/24 with an additional 8 being investigated but later withdrawn. Of the 52 complaints that were closed, 31 substantiated breaches by the organisation of the Commissioner’s Codes, 15 were fully unsubstantiated and 6 were resolved through the Commissioner’s re-direction scheme.
86. A review of the breaches found within complaints that were substantiated, suggests approximately half had breaches that might be suitable for a fine (such as operating above their authorised level, unregulated advisers, work that might be deemed to be misleading, taking advantage of clients or not acting competently).
87. Based on historic data the ISC estimate that there are around 40 cases per annum of unregulated advice or advertising which may be suitable for a fine.

88. It is difficult to determine to what extent the number of fines issued in future could change as a result of this legislation. It is possible that the ISC increase enforcement activity which would drive up the caseload, but it is also possible that the threat of a fine could deter businesses from operating in breach of the regulations which would decrease the caseload. Appropriate safeguards will be in place, where required the decision to impose a fine will be appealable to the First Tier Tribunal.
89. Creation of a mechanism to enforce return of fees or compensation could have a similar effect in driving up the caseload of enforcement activity, if advice seekers had more of an incentive to complain about poor/illegal advice. It is also possible that the threat of having to refund fees or pay compensation could deter businesses from operating in breach of the regulations which would decrease the caseload. The decision to enforce a refund of fees or pay compensation will attract a right of appeal via application to the First Tier Tribunal.
90. Compelling cooperation with an investigation is also likely to only be required in small numbers of cases (estimated at six per year) and puts no additional responsibilities on organisations above those which were originally agreed to in joining the regulatory scheme. It is hoped it will prevent delay and avoidance in responding to requests for information. A framework and guidance for this power would be developed ahead of implementation to ensure appropriate use. There will be no right of appeal against notice to compel, but if the adviser does not cooperate, a financial sanction could be imposed, which would attract a right of appeal as above.
91. Decisions to immediately suspend are proposed as being appealable to the First Tier Tribunal and are estimated at four per year.

#### **Level of financial sanctions**

92. The level of the fines is yet to be established, and the intention is to engage the sector on impacts before deciding the level of the financial sanction. The Home Office propose that it would be a maximum of £15,000 in line with the SRA fining capability.

#### **Impact on businesses**

93. Overall, it is judged that the impact on business of the preferred option will be small (estimated to be one per cent of regulated businesses facing a financial sanction per year, assuming no illegal activity is deterred) and is only intended to impact those businesses operating in breach of current legal and regulatory requirements.
94. The Home Office does not intend or expect that these measures will mean that legitimate businesses who operate within their legal parameters should experience any disruption to their business. There should not be an impact on legitimate business on the financial sanctions, they are about enforcing existing regulation. There should also not be an impact on legitimate business who are compliant from an increased range of investigatory powers; they are about regulatory action to investigate complaints or undertake inspections to ensure compliance with the regulatory regime.
95. Businesses would need to spend some time in ensuring they are aware of changes to the legislation, including changes to guidance, as detailed in section E above. The guidance, codes of conduct and regulations for advisers regulated by the IAA is already published for current processes. There will be costs of familiarisation to changes to the ISC's investigation powers and powers to impose financial sanctions.
96. As set out in the tables above, the majority of regulated organisations have less than five advisers. These measures are likely to mainly affect small businesses. The anticipated use of these powers is going to be small, and would only be those who were suspected of, or had breached the Code of Standards, or given advice illegally. Any impact is proportionate to the desired outcomes.

97. Small and Micro Businesses (SMBs) will not be exempt from this regulation or legislative change. In order to enforce compliance with the Commissioner's Code, it is imperative that all providers of immigration advice are held to the same standard regardless of business size. It can be assumed that there would be no disproportionate burden on SMBs acting in compliance with the regulation, however an SMB acting in breach of the regulation could face a fine which may have a relatively larger impact on business finances compared to a similar fine imposed on a larger business.

### **I. Trade implications**

98. There are no trade implications of this measure.

### **J. Environment: Natural capital impact and decarbonisation**

99. There are no environmental impacts of this measure.

### **K. Other wider impacts (consider the impacts of your proposals)**

100. There are no wider impacts of this measure outside of the immigration advice industry.

### **L. Risks and assumptions**

101. All analytical risks and assumptions are detailed in Section 10

## Annex

Mandatory specific impact test - Statutory Equalities Duties	Complete
<p data-bbox="231 481 646 517"><b>Statutory Equalities Duties</b></p> <p data-bbox="231 593 1225 663">The legislation will affect two groups: those seeking immigration advice, and those providing immigration advice.</p> <p data-bbox="231 689 1270 1048">In terms of those seeking advice, we consider it likely that those with certain protected characteristics may be more in need of quality immigration advice than the general public. Changes to the powers of the Immigration Advice Authority will be beneficial in creating improved regulatory controls and driving up standards of available immigration advice and services. There is a risk that it may result in some organisations choosing to stop carry out immigration advice and services work. Fewer organisations doing this work in the sector will likely negatively impact those with protected characteristics. However, it is proportionate to achieving the legitimate aim of increasing the standard in the sector by better regulation.</p> <p data-bbox="231 1072 1262 1285">For those providing immigration advice, we do not have any information or statistics on providers and whether they are more likely to have protected characteristics than the general population. Even if that was the case, the changes to funding structures and powers of the ISC aim to drive up standards across the sector and protect the public, including vulnerable people, from illegal, inappropriate, and poor advice.</p> <p data-bbox="231 1310 1241 1487">It is not considered that implementation of these measures will discriminate significantly against people with protected characteristics. If there is any discrimination, it is considered to be justified and proportionate to achieve the aims of improving standards of advice and ensuring the ISC has appropriate powers to tackle abuse of the immigration system.</p> <p data-bbox="231 1570 938 1606"><b>The SRO has agreed these summary findings.</b></p>	<p data-bbox="1337 994 1394 1025"><b>Yes</b></p>

