

# Immigration and Asylum Accreditation Scheme

## Standards and guidance: probationer level

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## Introduction

Immigration advisers can apply for accreditation under the Immigration and Asylum Accreditation Scheme at one of four levels:

- probationer (which allows advisers to work at the probationer level for a period of 12 months, after which they must successfully achieve accredited caseworker standard)
- accredited caseworker
- senior caseworker
- advanced caseworker

The scheme is based on a set of standards.

The standards identify the key knowledge and skills an individual must be able to demonstrate in order to be accredited at that level. The knowledge and skills will be assessed against the standards during the formal assessment process. Candidates who do not demonstrate that they meet the standards on assessment will not be accredited.

To assist candidates in preparing for the assessments, some guidance has been prepared on the statutory, policy and judicial material with which candidates might be expected to be familiar. However, it is the candidate's responsibility to ensure that their knowledge is current and addresses all of the areas covered by the standards. The Law Society cannot guarantee that the guidance will remain complete or up to date.

## The standards

The broad standards set out the key knowledge and skills advisers should have at each level. The standards also identify the depth of knowledge required for each area at each level of the scheme. In order to identify the depth of knowledge required at each level, the SRA has specified whether candidates need to have 'awareness', 'knowledge' or 'understanding' of particular areas. For the purposes of these standards, awareness, knowledge and understanding have been defined as follows:

**Understanding** the identification, assimilation and comprehension of information. Members can correctly paraphrase or summarise information and can relate it to other material, including its practical application.

**Knowledge** familiarity with specific information, including facts, definitions, rules, methods, process or settings, without necessarily being able to see its fullest implication or application.

**Awareness** acquaintance with general concepts, topics, rules, methods or procedures, without necessarily being able to summarise or paraphrase information. Members should be able to identify the limits of their awareness and be able to refer to source material for more in-depth knowledge

For example, if you are applying to become an accredited caseworker, you need to have an 'awareness' of 'the structure and sources of immigration law' but if you are applying to become a senior caseworker, you need to have a 'knowledge' of the 'structure and sources of immigration law'.

It has been recognised that senior caseworkers may wish to specialise in either immigration or asylum law. To reflect this, generic standards have been drafted which all senior caseworkers must meet together with specific additional standards for either immigration or asylum specialists.

The standards have been divided into key areas:

**Immigration law** covers the system of immigration control in the UK and the operation of the Immigration Rules, aside from those matters which have a pure business dimension.

**Business immigration** covers the commercial dimension to immigration applications.

**Asylum law and practice** addresses the procedures and substantive laws regarding refugees and their claim to remain in the UK, including issues such as welfare and support whilst in the UK.

**Human rights** addresses the law regarding the European Convention on Human Rights in so far as it impacts on immigration cases.

**EEA free movement law** deals with the law of free movement within the European Community.

**Nationality** comprises the law regarding the acquisition of British citizenship.

**Race relations** deals with race discrimination claims within immigration, nationality and asylum work.

**Appeals** deals with the right of appeal to, and procedures within, the Asylum and Immigration Tribunal.

**Detention and bail** deals with the loss of liberty sometimes suffered by immigrants and their potential remedies against that loss.

**Offences** deals with the major criminal offences under the immigration legislation.

**Welfare/support** requires a basic knowledge of the circumstances in which employment is prohibited for persons subject to immigration control and for asylum seekers.

**Ethics** sets out the key professional and ethical rules which are relevant to the work of the legal representative.

**Public funding** indicates the types of public funding available for immigration, asylum and nationality applicants under legal help and controlled legal representation.

**Skills** cover communications with clients and third parties, evaluation of evidence, problem solving, identification of issues, drafting, research and referral to other professionals.

## The guidance

Each of the standards at each level is accompanied by detailed guidance. The guidance is simply intended as a helpful expansion of the standards and is not an exhaustive list of legislation or material. There is no guarantee that you will pass the assessments simply by knowing the material and legislation in the guidance. Equally, there is no guarantee that the questions in the assessments will be restricted to the material in the guidance. The guidance should, however, provide you with a useful reference list for the key areas. You should also be aware that, although the guidance will be updated from time to time, it is the

responsibility of individual advisers to make sure that they are aware of any changes in legislation and practice.

The guidance includes details of particular cases, specifically identifying the principle within each case. This case law is intended to provide guidance on the key legal principles of which candidates need to be aware. You will not be assessed on all of the cases. You should be able to research and identify which cases are relevant to a matter.

## **Standards for probationer level**

### **Knowledge of law and procedure**

#### **Immigration law**

- awareness of the structure and sources of immigration law, including the framework of the immigration legislation
- knowledge of the procedure for making applications under the Immigration Rules
- knowledge of the structure and operation of the Immigration Rules
- knowledge of the appropriate application forms, fees and supporting documentation
- knowledge of key Immigration and Nationality Directorate policies outside the Immigration Rules (as identified in the guidance)
- knowledge of the personnel and terminology relating to immigration law
- knowledge of the types of immigration decision that may be made in an individual's case dependent on the stage of the entry or expulsion process that they have reached

#### **Asylum law and practice**

- knowledge of the requirements of the 1951 Convention according to Article 1A(2) for persons with a single nationality
- Awareness of the Refugee Qualification Directive and the Immigration Rules and Regulation that implement it domestically
- knowledge of the procedure for making an asylum application – applications, screening, substantive interviews, New Asylum Model
- awareness of 'safe third country' procedures
- knowledge of consequences of grant of refugee status (but limited to the form of leave to remain granted to refugees, and to family reunion issues under the Immigration Rules, and to the procedure for obtaining travel documents)
- awareness of the procedures and principles regarding Accompanied Children and Unaccompanied Asylum Seeking Children
- awareness of provisions relating to benefits and support for asylum seekers
- awareness of leading cases relating to the interpretation of the refugee convention by the courts, such leading cases to be set out from time to time in the Guidance

## **Human rights**

- knowledge of Articles 2, 3, 5 and 8 of the European Court Human Rights (ECHR)
- knowledge of consequences of grant of leave to remain under the ECHR (but limited to the form of leave to remain granted, and to family reunion issues under the Immigration Rules, and to the procedure for obtaining travel documents)
- awareness of leading cases relating to the interpretation of the ECHR by the European court and the domestic courts, such leading cases to be set out from time to time in the guidance.

## **European Economic Area (EEA) free movement law**

- awareness of which countries are members of the EEA and which have recently acceded to the European Union and are treated as special cases – ie, the 'A8' countries
- knowledge of the status of European Community (EC) law treaties, and of the operation of EC free movement law in the United Kingdom context in so far as it is set out in the Immigration (EEA) Regulations 2006
- awareness of the Turkish association agreement
- knowledge of the procedures for making applications for those exercising EEA treaty rights and their family members

## **Nationality**

- awareness of the process of naturalisation/registration

## **Business immigration**

- awareness of the structure and operation of the programmes that manage business-related entry to the United Kingdom

## **Appeals**

- knowledge of the structure and remedies available in the asylum and immigration tribunal
- knowledge of the time limits for appealing
- knowledge of the legislative provisions in relation to whether there is a right of appeal and what grounds of appeal might be appropriate

## **Detention and bail**

- knowledge of the circumstances in which detention is thought justified by the immigration authorities and the factors to be taken into account in determining whether detention is the right course of action
- knowledge of the main provisions relating to bail/temporary admission

## **Offences**

- knowledge of the major offences under the immigration legislation

### **Welfare/support**

- awareness of the main provisions relating to benefits/support for persons subject to immigration control
- knowledge of the circumstances in which employment is prohibited for persons subject to immigration control

### **Ethics**

- knowledge of the professional and ethical rules relating to confidentiality and conflicts, the independence of the legal representative, their duty to act in the best interests of the client, to maintain a proper standard of work and their duty to the court

### **Public funding**

- knowledge of the types of legal aid available for immigration, asylum and nationality applicants under legal help and controlled legal representation
- knowledge of the relevant tests – sufficient benefits, means and merits – to be applied in order to assess eligibility for legal help and controlled legal representation

### **Essential skills and abilities**

- ability to communicate to a high standard in written English
- ability to communicate to a high standard in oral English including through an interpreter
- ability to identify the need for and use of appropriate interpreters
- understanding of where to access the most up to date and relevant information and case-law through appropriate use of resources
- awareness of the cultural, gender and disability issues that may arise in the course of a case and the ability to deal sensitively with these issues
- ability to identify vulnerable clients and to make appropriate provisions (including referral)
- ability to identify the range of evidence needed to support an application
- ability to identify if it is appropriate for an application to be made and, if so, the appropriate application to be made according to each client's circumstances

## **Guidance for probationer level standards**

The guidance is simply intended as a helpful expansion of the standards and is not an exhaustive list of legislation or material. You should also be aware that, although the guidance will be updated from time to time, it is the responsibility of individual advisers to make sure that they are aware of any changes in legislation and practice.

### **Immigration law**

#### **Awareness of the structure and sources of immigration law, including the framework of the immigration legislation**

- the key principles of immigration control – the right of abode, entry clearance and the relevance of being a visa national, leave to enter and leave to remain

#### **Awareness of the personnel and terminology relating to immigration law**

- the common terms encountered in immigration as appear from time to time in the Glossary of the Immigration, Nationality and Refugee Law Handbook of the Joint Council for the Welfare of Immigrants

#### **Awareness of the types of immigration decision that may be made in an individual's case dependent on the stage of the entry or expulsion process that they have reached**

- extensions, variations and curtailments of leave, illegal entry, overstaying, administrative removal and removal directions, and deportation
- indefinite leave to remain and the grant of citizenship

#### **Knowledge of the structure and operation of the Immigration Rules**

- the main categories of entry under the Immigration Rules – visitors, students, au pairs, working holidaymakers, spouses, fiancé(e)s, unmarried partners, children, parents, grandparents and other dependent relatives
- the key concepts within the Immigration Rules – maintenance, accommodation, the definition of public funds and the meaning of additional recourse to public funds, intention to leave the country at the end of a period of leave, intention to live together permanently
- how to identify whether a particular category of entry can lead to settlement, whether switching is permitted, and what period of leave an applicant under a particular rule can anticipate receiving
- ability to determine which Immigration Rule is applicable to a client's case and to identify the criteria for a grant of leave for a particular category of applicant under the rules
- the general grounds for refusal set out in Part 9 of the Immigration Rules
- the subject matter, but not the content, of the Immigration Directorate Instructions (IDIs), the Diplomatic Service Procedures (DSPs), and the Operational Enforcement Manual (OEM)
- the concept of leave to remain outside the Immigration Rules

### **Knowledge of the appropriate application forms, fees and supporting documentation**

- the appropriate application form for each category of entry, knowledge of fees for immigration applications, and knowledge of what documentation should be obtained to ensure that a criteria of the Immigration Rules is satisfied
- the consequences of failure to make an application within time or on the appropriate prescribed form

### **Awareness of policies outside the Immigration Rules**

- how to identify whether there is a policy outside the Immigration Rules that is relevant to the facts of a client's case
- where to locate policies outside the Immigration Rules
- the Home Office policy on students and working

### **Business immigration**

#### **Awareness of the structure and operation of the programmes which manage business related entry to the UK**

- skilled and unskilled categories of managed migrant
- work permits and the requirements for leave to enter or remain for holders of work permits

### **Asylum law and practice**

#### **Awareness of the requirements of the 1951 Convention according to Article 1A(2) for persons with a single nationality**

- the constituents of the refugee definition: ie, the meaning of well founded fear, persecution, Convention reason, state protection, including an ability to recognise which facts of a client's claim are relevant to each of these concepts
- the existence of exclusion clauses but not their operation

#### **Awareness of asylum procedures in the UK**

- the procedure for claiming asylum in the United Kingdom up to but not including refusal of asylum within normal procedures but excluding accelerated procedures such as the 'fast track'
- procedures at Home Office interviews
- key terminology including statement of evidence forms (SEFs)
- the 'one-stop' procedure
- the Home Office policy to remove asylum seekers to safe third countries
- the circumstances in which fresh claims for asylum might be made
- the main sources of country information

- the existence of the Anti-terrorism, Crime and Security Act 2001 and the Terrorism Act 2000
- the existence of the Asylum Policy Instructions (APIs)
- the need to seek guidance on issues surrounding vulnerable people, including minors and those who are mentally incapacitated

**Awareness of consequences of grant of refugee status (but limited to the form of leave to remain granted to refugees and to family reunion issues under the Immigration Rules, and to the procedure for obtaining travel documents)**

- the Immigration Rule on family reunion for refugees, the form of leave to remain granted to refugees, the procedure for obtaining travel documents

**Awareness of provisions relating to benefits and support for asylum seekers**

- eligibility for NASS support to a person making an asylum claim for the first time
- eligibility for NASS support for a person with child dependants
- the availability of support from local authorities under Section 21 of the National Assistance Act 1948
- which decisions of NASS are capable of appeal and which can only be challenged by way of judicial review

**Human rights**

**Awareness of Articles 2, 3 and 8 of the ECHR**

- the five components of ECHR Article 3 (inhuman treatment, degrading treatment; inhuman punishment, degrading punishment; torture), how the facts of a client's claim might fit into them, and the need to show a minimum level of severity for the Article to be engaged
- ECHR Article 2
- Article 8 ECHR covers the right to family life and the right to private life, which might include medical issues
- Article 8 ECHR is a qualified right and that interference with it will normally be permissible unless exceptional circumstances are present
- the standard of proof for human rights arguments
- the circumstances in which fresh claims on human rights grounds might be made

**Awareness of consequences of grant of leave to remain under the ECHR (but limited to the form of leave to remain granted, and to family reunion issues under the Immigration Rules, and to the procedure for obtaining travel documents)**

- humanitarian protection and discretionary leave to remain
- family reunion under the Immigration Rules
- access to family reunion for persons with humanitarian protection and discretionary leave to remain

## **European Economic Area (EEA) free movement law**

### **Awareness of which countries are members of the EEA and which have recently acceded to the EU**

- the principle of free movement for individuals who are exercising Treaty rights under European Community law
- which countries are members of the EEA and which countries are the 'A8' and 'A2' countries
- which countries enjoy Association Agreements with the EEA
- the appropriate application forms for applying for residence documents, residence permits, and family permits for EEA nationals and their family members
- the fees and supporting documentation for such applications
- the requirement for workers from the 'A8' countries to register and the limited access to the labour market for workers from the 'A2' countries

## **Nationality**

### **Awareness of the process for making an application for naturalisation**

- the modes of obtaining nationality – by operation of law, by registration, and naturalisation
- the procedure for making an application for naturalisation

## **Appeals**

### **Awareness of the structure and remedies available in the Asylum and Immigration Tribunal**

- the structure of the Asylum and Immigration Tribunal
- the consequences of a successful appeal including the possibility of further challenges by the Home Office

### **Awareness of the provisions under legislation and under the appeals procedure rules that give rise to the main appeal rights**

- which decisions are capable of appeal

### **Knowledge of the time limits for appealing**

- calculating the date of deemed service of a decision at first instance, and the time limit for any subsequent appeal

## **Detention and bail**

### **Awareness of the circumstances in which detention is thought justified by the immigration authorities and the factors to be taken into account in determining whether detention is the right course of action**

- the procedures that accompany detention including the giving of reasons for detention as set out in paragraphs 38.6.3 of the Operational Enforcement Manual (Chapter 38: Detention and Temporary Release)

- the reasons for detention as set out in paragraph 1 of Chapter 38 of the Operational Enforcement Manual
- the factors to be taken into account by the Immigration Service in determining whether detention is the right course of action as set out in paragraphs 38.3 of the Operational Enforcement Manual

### **Awareness of provisions relating to bail and temporary admission**

- the remedies available against detention
- the likely conditions to be set on bail and temporary admission

## **Offences**

### **Awareness of the major offences under the immigration legislation**

- illegal entry, deception, overstaying, breaching conditions and facilitating are offences under the 1971 Act
- offences under sections 2 and 35 of the Immigration and Asylum (Treatment of Claimants Act 2004)
- offences connected with support under section 105 of the Immigration and Asylum Act 1999

## **Welfare/support**

### **Awareness of the circumstances in which employment is prohibited for persons subject to immigration control and for asylum seekers**

- the circumstances in which employment is prohibited for persons subject to immigration control
- the circumstances in which employment is prohibited for asylum seekers

## **Ethics**

### **Awareness of the key professional and ethical rules which are relevant to the work of the legal representative**

- SRA guidance on conflicts of interest and confidentiality
- SRA rules on the independence of the legal representative, the duty of the representative to act in the best interests of the client, to maintain a proper standard of work and the duty of the representative to the court

## **Public funding**

### **Awareness of the types of public funding available for immigration, asylum and nationality applicants under legal help and controlled legal representation**

- key concepts of public funding – legal help and controlled legal representation, the unique client number, cost limits, extensions, and the importance of determining the costs of legal advice given by previous representatives

**Awareness of the relevant tests – sufficient benefits, means and merits – to be applied in order to assess eligibility for legal help and controlled legal representation**

- merits tests for legal help and controlled legal representation, the funding code criteria including the prospects of success and the costs and benefits of granting funding