

BORDERS, CITIZENSHIP AND IMMIGRATION ACT 2009

EXPLANATORY NOTES

SUMMARY

Part 1 – Border functions

4. The intention of Part 1 is to provide the legislative framework for immigration officers and officials of the Secretary of State to exercise revenue and customs functions which have to date been exercised by Her Majesty's Revenue and Customs ("HMRC"). Part 1 also provides for the Secretary of State to exercise certain HMRC functions, and provides for the appointment of a Director of Border Revenue who will be responsible for "customs revenue functions" (the term used in the Act to describe functions relating to taxes, duties and levies). In practice the Government intends that officials of the UK Border Agency ("UKBA"), an executive agency of the Home Office, will exercise these functions on behalf of the Secretary of State and the Director of Border Revenue ("the Director") respectively. Non-revenue customs functions, for example the prevention of drugs smuggling, will be a matter for the Secretary of State and general customs officials. Customs revenue functions, for example the collection of duties and taxes from passengers and on postal packets, and the prevention of smuggling of goods where such duties and taxes have not been paid, will be a matter for the Director and customs revenue officials. The Director, like HMRC, will exercise revenue functions independently of Ministers, subject only to the general direction of the Treasury. Ministers intend that in this way they will remain at arm's length from tax-related decisions, although UKBA officials may have functions in relation to both tax and non-tax matters.
5. The Government intends that UKBA's customs role will be focused on border-related matters, such as the importation and exportation of goods, while HMRC will continue to exercise revenue and customs functions inland. The latter includes inland checks on excise goods and customs checks and audits at business premises. The processing of customs freight declarations and the collection of duties is a centralised function which will remain with HMRC. Certain non-revenue regimes which are business-based, will also remain with HMRC such as strategic export controls and protecting intellectual property rights. UKBA will carry out physical examinations at the frontier although some of those interventions may be carried out at the request of HMRC. For example HMRC may ask UKBA to examine a consignment suspected to contain counterfeit goods to ensure the goods are legitimate. Responsibility for overall revenue and customs policy will stay with HMRC.
6. HMRC and UKBA will work closely together in the discharge of their respective customs functions. UKBA may support HMRC's inland investigations into revenue smuggling and HMRC investigators will attend at the border in response to revenue smuggling detected by UKBA. The concurrent exercise of customs functions is therefore necessary.

These notes refer to the Borders, Citizenship and Immigration Act 2009 (c.11) which received Royal Assent on 21 July 2009

7. **Sections 1 to 13** enable the Secretary of State and the Director of Border Revenue to exercise concurrently with the Commissioners for HMRC (“the Commissioners”) functions which are currently exercised by the Commissioners and which relate to general customs matters and customs revenue matters. These sections also enable the Secretary of State to designate officials for the purpose of carrying out functions relating to general customs matters and the Director to designate officials of the Secretary of State for the purpose of carrying out functions relating to customs revenue matters. They set out the framework within which designations will be made and require designated officials to comply with relevant directions issued by the Secretary of State and the Director.
8. **Sections 14 to 21** explain how customs information may be used and disclosed and amend the duty to share information in section 36 of the Immigration, Asylum and Nationality Act 2006 (“IANA 2006”).
9. **Section 22** applies provisions of the Police and Criminal Evidence Act 1984 (PACE) and the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE (NI)) to criminal investigations conducted by designated customs officials in relation to a general customs or customs revenue matter, and to persons detained by such designated customs officials. The provisions of PACE and PACE (NI) to be applied broadly mirror the provisions applied to those officers of HMRC who carry out equivalent functions currently.
10. **Section 23** provides that the Secretary of State may by order apply provisions of PACE and PACE (NI) to persons detained by immigration officers or designated customs officials as part of a criminal investigation, as well as to any such investigation conducted by those officers or officials. As the provisions of PACE do not apply in Scotland section 24 amends the Criminal Law (Consolidation) (Scotland) Act 1995 so that in Scotland the current provisions will apply to UKBA as they apply currently to HMRC.
11. **Section 25** amends the definition of a short-term holding facility in section 147 of the Immigration and Asylum Act 1999 (“the 1999 Act”).
12. **Section 26** provides for a scheme, or schemes, to enable the transfer of certain property, rights and liabilities between the Commissioners or officers of Revenue and Customs and the Secretary of State, the Director or designated customs officials. Section 27 provides for the sharing of facilities and services between HMRC and those exercising immigration, asylum, nationality or customs functions, for the purposes of the exercise of any of those functions.
13. **Sections 28 to 30** make provision for a framework for inspections (conferring functions on the Chief Inspector of the UK Border Agency and enabling the Secretary of State to confer functions on Her Majesty’s Inspectors of Constabulary, the Scottish inspectors and the Northern Ireland inspectors in relation to the exercise of customs functions). Section 31 allows the Attorney General to assign to the Director of Revenue and Customs Prosecutions functions of prosecuting and advising on criminal investigations carried out by officials of the Secretary of State and other persons, such as constables. Section 32 makes provision for the payment to the Commissioners of revenue received by the Secretary of State and the Director of Border Revenue as a result of exercising, respectively, a general customs function or a customs revenue function, while section 33 allows for provision to be made in the future for such revenue to be paid into the Consolidated Fund. Section 34 makes interim provision for the duty regarding the welfare of children until section 55 of the Act comes into force.