

BORDERS, CITIZENSHIP AND IMMIGRATION ACT 2009

EXPLANATORY NOTES

COMMENTARY

Part 1: Border Functions

General customs officials

Section 3: Designation of general customs officials

39. **Section 3(1)** provides that the Secretary of State by whom general customs functions are exercisable may designate an immigration officer or any other of the Secretary of State's officials as a general customs official. Subsection (2) provides that in relation to a general customs matter a general customs official has the same functions as an officer of Revenue and Customs would have and that a general customs official may exercise those functions that are conferred on the Secretary of State by section 1.
40. Subsection (3) makes clear that the section does not impact in any way on the ability of any other official of the Secretary of State to exercise the Secretary of State's functions. This preserves the power to devolve ministerial functions to civil servants under *Carltona* (*Carltona Limited v Commissioners of Works* [1943] 2 ER 560 (CA)). Subsection (4) provides that if a function may be exercised in relation to both a general customs matter and another matter, the general customs official may exercise it only in relation to the general customs matter.
41. Subsection (5) provides that in relation to general customs matters, where appropriate, references to an officer of Revenue and Customs, or to HMRC, in an enactment, instrument or document to which section 3 applies are to be construed as including a reference to a general customs official. Subsection (6) provides that references in section 3 to functions of an officer of Revenue and Customs are to functions conferred by an enactment to which section 3 applies. Subsection (7) specifies that this section applies to an enactment passed or made, or to an instrument or document issued, before the Act is passed and, subject to express provision to the contrary, to an enactment passed or made, or to an instrument or document issued, after the Act is passed. Subsection (8), however, provides that section 3 only applies to certain sections of the CRCA 2005, namely section 2(4) (continuation of anything begun by one officer by another), section 6 (officers' initial functions), section 25(1) and (5) (conduct of civil proceedings in a magistrates' court or in the sheriff court), section 25A(1) (certificates of debt) and sections 31 to 33 (assault, obstruction and powers of arrest) excluding the power to arrest a person for the offence of impersonation under section 30. Subsection (9) provides that the extent to which a general customs official may exercise functions under section 3 is subject to any limitation specified in the official's designation made under section 4 and to any designation of the same official under section 11 (designation of customs revenue officials).