

# **BORDERS, CITIZENSHIP AND IMMIGRATION ACT 2009**

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## **EXPLANATORY NOTES**

### **COMMENTARY**

#### **Part 1: Border Functions**

#### **Inspection and oversight**

#### ***Section 31: Prosecution of offences***

128. **Section 31** enables the Attorney General to assign functions to the Director of Revenue and Customs Prosecutions to institute and assume the conduct of prosecutions in England and Wales and to provide advice relating to criminal investigations carried out by the persons specified at subsection (2), namely, designated customs officials, immigration officers, officials of the Secretary of State, the Secretary of State, the Director, a person acting on behalf of any of those persons and constables. Subsection (1) provides an order-making power to enable the Attorney General to assign functions to the Director of Revenue and Customs Prosecution. Subsection (1) also sets out the functions that may be assigned by the Attorney General. These are the functions of instituting or assuming the conduct of criminal proceedings in England or Wales, or providing legal advice.
129. Subsection (3) ensures that the provisions of the CRCA 2005 relating to the exercise of the functions of the Director of Revenue and Customs Prosecutions apply also to the exercise of functions conferred by section 31. Subsection (4) applies the prosecutor functions in respect of charging decisions contained in section 37 to 37B of PACE to the functions exercised by the Director of Revenue and Customs Prosecutions under section 31. Subsection (5) provides that an order under section 31 may include incidental, supplementary and consequential provision, may make transitional or transitory provision or savings, or may be amended or revoked. Subsection (6) provides that the reference in section 31 to instituting criminal proceedings is to be construed in accordance with section 15(2) of the Prosecution of Offences Act 1985. Subsection (7) specifies the meaning of “criminal investigation” for the purpose of this section.