



# Borders, Citizenship and Immigration Act 2009

## 2009 CHAPTER 11

### PART 4

#### MISCELLANEOUS AND GENERAL

##### *Judicial review*

### **53 Transfer of certain immigration judicial review applications**

(1) In section 31A of the Supreme Court Act 1981 (c. 54) (England and Wales: transfer from the High Court to the Upper Tribunal)—

(a) after subsection (2) insert—

“(2A) If Conditions 1, 2, 3 and 5 are met, but Condition 4 is not, the High Court must by order transfer the application to the Upper Tribunal.”,  
and

(b) after subsection (7) insert—

“(8) Condition 5 is that the application calls into question a decision of the Secretary of State not to treat submissions as an asylum claim or a human rights claim within the meaning of Part 5 of the Nationality, Immigration and Asylum Act 2002 wholly or partly on the basis that they are not significantly different from material that has previously been considered (whether or not it calls into question any other decision).”

(2) In section 25A of the Judicature (Northern Ireland) Act 1978 (c. 23) (Northern Ireland: transfer from the High Court to the Upper Tribunal)—

(a) after subsection (2) insert—

---

*Status: This is the original version (as it was originally enacted).*

---

“(2A) If Conditions 1, 2, 3 and 5 are met, but Condition 4 is not, the High Court must by order transfer the application to the Upper Tribunal.”,  
and

(b) after subsection (7) insert—

“(8) Condition 5 is that the application calls into question a decision of the Secretary of State not to treat submissions as an asylum claim or a human rights claim within the meaning of Part 5 of the Nationality, Immigration and Asylum Act 2002 wholly or partly on the basis that they are not significantly different from material that has previously been considered (whether or not it calls into question any other decision).”

(3) In section 20 of the Tribunals, Courts and Enforcement Act 2007 (c. 15) (Scotland: transfer from the Court of Session to the Upper Tribunal)—

(a) in subsection (1), for the “and” at the end of paragraph (a) substitute—

“(aa) must, if Conditions 1, 2 and 5 are met, but Condition 4 is not, and”, and

(b) after subsection (5) insert—

“(5A) Condition 5 is that the application calls into question a decision of the Secretary of State not to treat submissions as an asylum claim or a human rights claim within the meaning of Part 5 of the Nationality, Immigration and Asylum Act 2002 wholly or partly on the basis that they are not significantly different from material that has previously been considered (whether or not it calls into question any other decision).”

### *Trafficking people for exploitation*

## **54 Trafficking people for exploitation**

In section 4(4) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19) (trafficking people for exploitation: meaning of exploitation), for paragraph (d) substitute—

“(d) a person uses or attempts to use him for any purpose within subparagraph (i), (ii) or (iii) of paragraph (c), having chosen him for that purpose on the grounds that—

(i) he is mentally or physically ill or disabled, he is young or he has a family relationship with a person, and

(ii) a person without the illness, disability, youth or family relationship would be likely to refuse to be used for that purpose.”

### *Children*

## **55 Duty regarding the welfare of children**

(1) The Secretary of State must make arrangements for ensuring that—

- (a) the functions mentioned in subsection (2) are discharged having regard to the need to safeguard and promote the welfare of children who are in the United Kingdom, and
  - (b) any services provided by another person pursuant to arrangements which are made by the Secretary of State and relate to the discharge of a function mentioned in subsection (2) are provided having regard to that need.
- (2) The functions referred to in subsection (1) are—
- (a) any function of the Secretary of State in relation to immigration, asylum or nationality;
  - (b) any function conferred by or by virtue of the Immigration Acts on an immigration officer;
  - (c) any general customs function of the Secretary of State;
  - (d) any customs function conferred on a designated customs official.
- (3) A person exercising any of those functions must, in exercising the function, have regard to any guidance given to the person by the Secretary of State for the purpose of subsection (1).
- (4) The Director of Border Revenue must make arrangements for ensuring that—
- (a) the Director’s functions are discharged having regard to the need to safeguard and promote the welfare of children who are in the United Kingdom, and
  - (b) any services provided by another person pursuant to arrangements made by the Director in the discharge of such a function are provided having regard to that need.
- (5) A person exercising a function of the Director of Border Revenue must, in exercising the function, have regard to any guidance given to the person by the Secretary of State for the purpose of subsection (4).
- (6) In this section—
- “children” means persons who are under the age of 18;
  - “customs function”, “designated customs official” and “general customs function” have the meanings given by Part 1.
- (7) A reference in an enactment (other than this Act) to the Immigration Acts includes a reference to this section.
- (8) Section 21 of the UK Borders Act 2007 (c. 30) (children) ceases to have effect.

### *General*

#### **56 Repeals**

The Schedule contains repeals.

#### **57 Extent**

- (1) Subject to the following provisions of this section, this Act extends to—
- (a) England and Wales,
  - (b) Scotland, and
  - (c) Northern Ireland.

---

*Status: This is the original version (as it was originally enacted).*

---

- (2) Sections 22 (application of the PACE orders) and 23 (investigations and detention: England and Wales and Northern Ireland) extend to England and Wales and Northern Ireland only.
- (3) An amendment, modification or repeal by this Act has the same extent as the enactment or relevant part of the enactment to which it relates (ignoring extent by virtue of an Order in Council under any of the Immigration Acts).
- (4) Subsection (3) does not apply to—
  - (a) the amendments made by section 52 (detention at ports in Scotland);
  - (b) the amendment made by section 54 (trafficking people for exploitation), which extends to England and Wales and Northern Ireland only.
- (5) Her Majesty may by Order in Council provide for any of the provisions of this Act, other than any provision of Part 1 (border functions) or section 53 (transfer of certain immigration judicial review applications), to extend, with or without modifications, to any of the Channel Islands or the Isle of Man.
- (6) Subsection (5) does not apply in relation to the extension to a place of a provision which extends there by virtue of subsection (3).

## **58 Commencement**

- (1) Part 1 (border functions) comes into force on the day this Act is passed.
- (2) The provisions of Part 2 (citizenship) come into force on such day as the Secretary of State may by order appoint.
- (3) In Part 3 (immigration)—
  - (a) section 50 (restriction on studies) comes into force on the day this Act is passed;
  - (b) sections 51 (fingerprinting of foreign criminals) and 52 (detention at ports in Scotland) come into force on such day as the Secretary of State may by order appoint.
- (4) In this Part—
  - (a) section 53 (transfer of certain immigration judicial review applications) comes into force on such day as the Lord Chancellor may by order appoint;
  - (b) sections 54 (trafficking people for exploitation) and 55 (duty regarding the welfare of children) come into force on such day as the Secretary of State may by order appoint.
- (5) Any repeal in the Schedule (and section 56 so far as relating to the repeal) comes into force in the same way as the provisions of this Act to which the repeal relates.
- (6) The other provisions of this Part come into force on the day this Act is passed.
- (7) An order under this section must be made by statutory instrument.
- (8) An order under this section—
  - (a) may appoint different days for different purposes;
  - (b) may include transitional or incidental provision or savings.

- (9) An order commencing sections 39 to 41 (acquisition of British citizenship by naturalisation) must include provision that the amendments made by those sections do not have effect in relation to an application for naturalisation as a British citizen if—
- (a) the date of the application is before the date on which those sections come into force in accordance with the order (“the date of commencement”), or
  - (b) the date of the application is before the end of the period of 24 months beginning with the date of commencement and the application is made by a person who falls within subsection (10) or (11).
- (10) A person falls within this subsection if on the date of commencement the person has indefinite leave to remain in the United Kingdom.
- (11) A person falls within this subsection if the person is given indefinite leave to remain in the United Kingdom on an application—
- (a) the date of which is before the date of commencement, and
  - (b) which is decided after the date of commencement.
- (12) The reference in subsection (9) to an order commencing sections 39 to 41 does not include an order commencing those sections for the purpose only of enabling regulations to be made under the British Nationality Act 1981 (c. 61).
- (13) In the case of an order commencing sections 39 to 41, transitional provision may, in particular—
- (a) provide that the qualifying period for the purposes of paragraph 1 or 3 of Schedule 1 to the British Nationality Act 1981 includes time before that commencement;
  - (b) provide for leave to enter or remain in the United Kingdom granted before that commencement to be treated as qualifying temporary residence leave or probationary citizenship leave for the purposes of that Schedule.
- (14) In the case of an order commencing section 45 (acquisition of British citizenship through the female line), transitional provision may, in particular, provide that section 45 is to apply to an application made, but not determined, under section 4C of the British Nationality Act 1981 before that commencement.
- (15) No order may be made commencing section 52 (detention at ports in Scotland) unless the Secretary of State has consulted the Scottish Ministers.
- (16) No order may be made commencing section 53 (transfer of certain immigration judicial review applications) unless the functions of the Asylum and Immigration Tribunal in relation to appeals under Part 5 of the Nationality, Immigration and Asylum Act 2002 (c. 41) have been transferred under section 30(1) of the Tribunals, Courts and Enforcement Act 2007 (c. 15).

## **59 Short title**

This Act may be cited as the Borders, Citizenship and Immigration Act 2009.