

BORDERS, CITIZENSHIP AND IMMIGRATION ACT 2009

EXPLANATORY NOTES

COMMENTARY

Part 1: Border Functions

General customs functions of the Secretary of State

Section 1: General customs functions of the Secretary of State

32. [Section 1](#) provides for the concurrent exercise by the Secretary of State of functions in relation to a general customs matter that are currently conferred on the Commissioners by an enactment passed or made before the end of the session in which the Act is passed. It also ensures that where appropriate any reference to the Commissioners in any such enactment, or in any instrument or document issued before the passing of the Act, is construed as including a reference to the Secretary of State.
33. Subsection (2) defines a “general customs matter” as a matter in relation to which the Commissioners or officers of Revenue and Customs have functions other than one of the matters specified in paragraphs (a) to (e) of subsection (2). These specified matters are those listed in Schedule 1 to the Commissioners for Revenue and Customs Act 2005 (“CRCA 2005”) (former Inland Revenue matters), any tax, duty or levy not mentioned in that Schedule, a matter in respect of which functions were transferred to the Commissioners from the Paymaster General, the subject matter of Council Directive [2005/60/EC](#) on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing and the subject matter of EC Regulation 1781/2006 on information on the payer accompanying transfers of funds. In essence, these exclusions mean that the Secretary of State may not exercise any tax function of the Commissioners, former functions of the Office of the Paymaster General or any function which relates to the Commissioners’ remit in relation to the regulation of money businesses. The exclusion of these functions leaves the Secretary of State with the ability to exercise non-revenue customs, shipping and enforcement related functions of HMRC.
34. Subsection (3) provides that where a function is exercisable concurrently by the Commissioners and the Secretary of State and may be exercised by the Commissioners in relation both to a general customs matter and another matter, the Secretary of State may exercise it only in relation to the general customs matter.
35. Subsection (4) provides that, where appropriate, a reference to the Commissioners for Her Majesty’s Revenue and Customs, or to HMRC, in an enactment, instrument or document to which section 1 applies are to be construed as including a reference to the Secretary of State. Subsection (5)(a) provides that references in section 1 (other than in subsection (8)) to functions of the Commissioners are to functions conferred by an enactment to which the section applies; subsection (5)(b) provides that references in section 1 (other than in subsection (8)) to functions of officers of Revenue and Customs

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

are to functions conferred by an enactment to which section 3 (designation of general customs officials) applies.

36. Subsection (6) specifies that section 1 applies to an enactment passed or made before the end of the session in which the Act is passed and to an instrument or document issued before the passing of the Act. Subsection (7) provides that section 1 applies only to certain sections of the CRCA 2005, namely section 5(2)(b) (Commissioners' initial functions), section 9 (ancillary powers), section 25A(2) (certificates of debt) and sections 31 (obstruction) and 33 (powers of arrest), other than in its application of an offence under section 30 (impersonation). It is unnecessary to apply all provisions of the CRCA 2005 to the Secretary of State, as a number of provisions of that Act are either already dealt with in this Act (such as the provisions concerning confidentiality of information similar to sections 17 to 23 CRCA 2005) or are not required given the common law powers of the Secretary of State (for example the power to make rewards in section 26 CRCA 2005 would already be available to the Secretary of State under the common law).
37. Subsection (8) defines "general customs function" for the purposes of this Part of the Act as a function exercisable by the Secretary of State by or by virtue of section 1 or by general customs officials by virtue of section 3; a function that is conferred on general customs officials or the Secretary of State by virtue of sections 22 to 23 (investigations and detention); a function under Community law that is exercisable by the Secretary of State or general customs officials in relation to a matter in relation to which functions under Community law are exercisable by the Commissioners or officers of HMRC, and that is not one of the matters listed in subsection (2). In particular this means that subsection (8) defines the "general customs functions" exercisable by the Secretary of State and general customs officials, as including functions under Community law, so that sections 14 to 21 apply to information generated in the exercise of those functions.