



# Borders, Citizenship and Immigration Act 2009

## 2009 CHAPTER 11

### PART 1

#### BORDER FUNCTIONS

##### *Inspection and oversight*

#### **28 Inspections by the Chief Inspector of the UK Border Agency**

(1) In section 48 of the UK Borders Act 2007 (c. 30) (establishment of the Border and Immigration Inspectorate), in subsection (1) for “the Border and Immigration Agency” substitute “the UK Border Agency”.

(2) After that subsection insert—

“(1A) The Chief Inspector shall monitor and report on the efficiency and effectiveness of the performance of functions by the following—

- (a) designated customs officials, and officials of the Secretary of State exercising customs functions;
- (b) immigration officers, and officials of the Secretary of State exercising functions relating to immigration, asylum or nationality;
- (c) the Secretary of State in so far as the Secretary of State has general customs functions;
- (d) the Secretary of State in so far as the Secretary of State has functions relating to immigration, asylum or nationality;
- (e) the Director of Border Revenue and any person exercising functions of the Director.

(1B) The Chief Inspector shall monitor and report on the efficiency and effectiveness of the services provided by a person acting pursuant to arrangements relating to the discharge of a function within subsection (1A).”

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*Status: This is the original version (as it was originally enacted).*

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- (3) In subsection (2) of that section—
- (a) omit the words from the beginning to “Agency;”,
  - (b) in paragraph (a), for “within the Border and Immigration Agency” substitute “among the persons listed in subsections (1A) and (1B) (the “listed persons”)”,
  - (c) in paragraph (b), for “the Border and Immigration Agency” substitute “the listed persons”, and
  - (d) after paragraph (g) insert—
    - “(ga) practice and procedure in relation to the prevention, detection and investigation of offences,
    - (gb) practice and procedure in relation to the conduct of criminal proceedings,
    - (gc) whether customs functions have been appropriately exercised by the Secretary of State and the Director of Border Revenue.”.
- (4) After that subsection insert—
- “(2A) Unless directed to do so by the Secretary of State, the Chief Inspector shall not monitor and report on the exercise by the listed persons of—
- (a) functions at removal centres and short term holding facilities, and under escort arrangements, in so far as Her Majesty’s Chief Inspector of Prisons has functions under section 5A of the Prison Act 1952 in relation to such functions, and
  - (b) functions at detention facilities, in so far as Her Majesty’s Inspectors of Constabulary, the Scottish inspectors or the Northern Ireland inspectors have functions by virtue of section 29 of the Borders, Citizenship and Immigration Act 2009 in relation to such functions.”
- (5) Omit subsection (3) of that section.
- (6) After that subsection insert—
- “(3A) In this section “customs function”, “designated customs official” and “general customs function” have the meanings given by Part 1 of the Borders, Citizenship and Immigration Act 2009.”
- (7) In section 53 of that Act (relationship with other bodies), in subsection (1)—
- (a) in paragraph (a), for “the Border and Immigration Agency” substitute “a person listed in section 48(1A) or (1B)”, and
  - (b) in paragraph (b), for “the Agency” substitute “such a person”.
- (8) In subsection (3) of that section, for “the Agency” insert “a person listed in section 48(1A) or (1B)”.
- (9) In section 56(2)(a) of that Act (Senior President of Tribunals), for “the Border and Immigration Agency” substitute “the UK Border Agency”.
- (10) The person holding the office of the Chief Inspector of the Border and Immigration Agency immediately before the day on which this section comes into force is to be treated, on and after that day, as if appointed as the Chief Inspector of the UK Border Agency under section 48(1) of the UK Borders Act 2007 (c. 30).

**29 Inspections by Her Majesty’s Inspectors of Constabulary etc.**

- (1) The Secretary of State may make regulations conferring functions on Her Majesty’s Inspectors of Constabulary, the Scottish inspectors or the Northern Ireland inspectors in relation to—
- (a) designated customs officials, and officials of the Secretary of State exercising customs functions;
  - (b) immigration officers, and officials of the Secretary of State exercising functions relating to immigration, asylum or nationality;
  - (c) the Secretary of State in so far as the Secretary of State has general customs functions;
  - (d) the Secretary of State in so far as the Secretary of State has functions relating to immigration, asylum or nationality;
  - (e) the Director of Border Revenue and any person exercising functions of the Director;
  - (f) persons providing services pursuant to arrangements relating to the discharge of a function of a person mentioned in paragraphs (a) to (e).
- (2) Regulations under subsection (1) may—
- (a) in relation to Her Majesty’s Inspectors of Constabulary, apply (with or without modification) or make provision similar to any provision of sections 54 to 56 of the Police Act 1996 (c. 16) (inspection);
  - (b) in relation to the Scottish inspectors, apply (with or without modification) or make provision similar to any provision of section 33 or 34 of the Police (Scotland) Act 1967 (c. 77) (inspection);
  - (c) in relation to the Northern Ireland inspectors, apply (without or without modification) or make provision similar to any provision of section 41 or 42 of the Police (Northern Ireland) Act 1998 (c. 32) (inspection).
- (3) Regulations under subsection (1)—
- (a) may enable a Minister of the Crown to require an inspection to be carried out;
  - (b) must provide for a report of an inspection to be made and, subject to any exceptions required or permitted by the regulations, published;
  - (c) must provide for an annual report by Her Majesty’s Inspectors of Constabulary;
  - (d) may make provision for payment to or in respect of Her Majesty’s Inspectors of Constabulary, the Scottish inspectors or the Northern Ireland inspectors.
- (4) An inspection carried out by virtue of this section may not address a matter of a kind which the Comptroller and Auditor General may examine under section 6 of the National Audit Act 1983 (c. 44).
- (5) An inspection carried out by virtue of this section must be carried out jointly by Her Majesty’s Inspectors of Constabulary and the Scottish inspectors—
- (a) if it is carried out wholly in Scotland, or
  - (b) in a case where it is carried out partly in Scotland, to the extent that it is carried out there.
- (6) In this section—
- (a) “the Scottish inspectors” means the inspectors of constabulary appointed under section 33(1) of the Police (Scotland) Act 1967;

- (b) “the Northern Ireland inspectors” means the inspectors of constabulary appointed under section 41(1) of the Police (Northern Ireland) Act 1998.

### **30 Complaints and misconduct**

- (1) In section 41 of the Police and Justice Act 2006 (c. 48) (power to confer functions on the Independent Police Complaints Commission in respect of the exercise of immigration functions)—
- (a) after subsection (1)(b) insert—
- “(c) the provision of services pursuant to arrangements relating to the discharge of a function within paragraph (a) or (b).”, and
- (b) after subsection (2) insert—
- “(2A) The Secretary of State may make regulations conferring functions on the Independent Police Complaints Commission in relation to—
- (a) the exercise by designated customs officials, and officials of the Secretary of State, of customs functions within the meaning of Part 1 of the Borders, Citizenship and Immigration Act 2009;
- (b) the exercise by the Director of Border Revenue, and any person exercising functions of the Director, of customs revenue functions within the meaning of that Part of that Act;
- (c) the provision of services pursuant to arrangements relating to the discharge of a function within paragraph (a) or (b).”
- (2) In each of subsections (4) and (7) of that section, after “subsection (1)” insert “or (2A)”.
- (3) In the title to that section, after “functions” insert “and customs functions”.