



Borders, Citizenship and Immigration Act 2009

2009 CHAPTER 11

PART 1

BORDER FUNCTIONS

Supplementary

35 Power to modify enactments

- (1) The Secretary of State may by order provide for an enactment (or a description of enactments) to apply in relation to—
 - (a) relevant persons, or
 - (b) the exercise of functions by relevant persons,with such modifications as the Secretary of State considers necessary or expedient.
- (2) In this section—
 - (a) “relevant persons” means—
 - (i) the Secretary of State by whom general customs functions are exercisable,
 - (ii) the Director of Border Revenue, and
 - (iii) designated customs officials, immigration officers and officials in the department of that Secretary of State, and
 - (b) a reference to relevant persons includes a reference to any description of relevant persons.
- (3) An order under this section may, in particular, include provision for or in connection with—
 - (a) extending to relevant persons an exemption or protection afforded by an enactment to any other description of persons;

- (b) providing for the disclosure of information to, or the doing of other things in relation to, relevant persons.
- (4) The Secretary of State must consult the Commissioners for Her Majesty's Revenue and Customs before making an order under this section that—
- (a) makes provision in relation to a general customs matter or a customs revenue matter, or
 - (b) makes provision in relation to the exercise of a customs function.

36 Power to make supplementary etc. provision

- (1) The Secretary of State may by order make—
- (a) such incidental, supplementary or consequential provision, or
 - (b) such transitional or transitory provision or savings,
- as the Secretary of State considers appropriate for the general purposes, or any particular purpose, of this Part, or in consequence of, or for giving full effect to, any provision made by or under this Part.
- (2) An order under subsection (1) may amend, repeal, revoke or otherwise modify any enactment (including this Act).
- (3) The power to make an order under subsection (1) includes power to repeal or revoke an enactment which is spent.
- (4) Nothing in this Part affects the generality of the power conferred by this section.

37 Subordinate legislation

- (1) Orders and regulations under this Part must be made by statutory instrument.
- (2) An order or regulations under this Part may—
- (a) include incidental, supplementary and consequential provision;
 - (b) make transitional or transitory provision or savings;
 - (c) make different provision for different cases or circumstances.
- (3) A statutory instrument containing an order or regulations to which subsection (4) applies may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (4) This subsection applies to—
- (a) an order under section 2 (power of Secretary of State to modify functions);
 - (b) an order under section 8 (power of Treasury to modify Director's functions);
 - (c) regulations under section 16(8) (power to permit disclosure);
 - (d) an order under section 23 (application of provisions about investigations and detention: England and Wales and Northern Ireland);
 - (e) an order under section 35 (power to modify enactments);
 - (f) an order under section 36 (power to make supplementary etc. provision) that amends or repeals primary legislation.
- (5) A statutory instrument containing only—
- (a) regulations under section 29 (inspections by Her Majesty's Inspectors of Constabulary etc.), or

- (b) an order under section 36 that does not amend or repeal primary legislation, is subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) A statutory instrument containing an order under section 33 (power to require payment into the Consolidated Fund) is subject to annulment in pursuance of a resolution of the House of Commons.
- (7) In this section “primary legislation” means—
- (a) an Act of Parliament,
 - (b) an Act of the Scottish Parliament,
 - (c) a Measure or Act of the National Assembly for Wales, or
 - (d) Northern Ireland legislation.
- (8) This section does not apply to an order under section 31 (prosecution of offences).

38 Interpretation

In this Part—

“Community law” means—

- (a) all the rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the Community Treaties, and
- (b) all the remedies and procedures from time to time provided for by or under the Community Treaties,

as in accordance with the Community Treaties are without further enactment to be given legal effect or used in the United Kingdom;

“customs function” has the meaning given by section 14(6);

“customs information” has the meaning given by section 14(6);

“customs revenue function” has the meaning given by section 7(9);

“customs revenue information” has the meaning given by section 14(6);

“customs revenue matter” has the meaning given by section 7(2);

“customs revenue official” means a customs revenue official designated under section 11(1);

“designated customs official” has the meaning given by section 14(6);

“enactment” includes—

- (a) an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978 (c. 30);
- (b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament;
- (c) an enactment contained in, or in instrument made under, Northern Ireland legislation;
- (d) an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales;

“function” means any power or duty (including a power or duty that is ancillary to another power or duty);

“general customs function” has the meaning given by section 1(8);

“general customs matter” has the meaning given by section 1(2);

“general customs official” means a general customs official designated under section 3(1);

“personal customs information” has the meaning given by section 15(4);

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

“personal customs revenue information” has the meaning given by section 15(4);

“relevant official” has the meaning given by section 15(3).