

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

BORDERS, CITIZENSHIP AND IMMIGRATION ACT 2009

EXPLANATORY NOTES

COMMENTARY

Part 4: Miscellaneous and General

Section 53: Transfer of certain immigration judicial review applications

201. Section 19 of the Tribunals, Courts and Enforcement Act 2007 amended the Supreme Court Act 1981 and the Judicature (Northern Ireland) Act 1978 to provide for the transfer of judicial review applications to the Upper Tribunal. Section 20 of the Tribunals, Courts and Enforcement Act 2007 made equivalent provision for Scotland. Under these provisions a judicial review application may not be transferred if it calls into question a decision under the Immigration Acts, the BNA 1981, an instrument having effect under those enactments or any other provision of law determining British citizenship.
202. Subsection (1) of section 53 allows immigration and asylum judicial review applications to be transferred from the High Court to the Upper Tribunal, provided that they call into question a decision by the Secretary of State not to treat submissions as an asylum or human rights claim within the meaning of part 5 of the NIAA 2002 wholly or partly on the basis that they are not significantly different from material that has been previously considered. Certain other conditions must also be met. These types of cases are commonly referred to as “fresh claims” cases. Subsections (2) and (3) make equivalent provision for Northern Ireland and Scotland.