CRIME AND COURTS ACT 2013

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EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Courts and Justice

Section 22: Transfer of immigration or nationality judicial review applications

415.   Currently the only class of immigration and asylum judicial review applications and applications for permission to apply for judicial review that may be transferred to the Upper Tribunal are those which 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 Nationality, Immigration and Asylum Act 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 claim" judicial reviews. *Subsection (1)* amends section 31A of the Senior Courts Act 1981 to remove this limitation in respect of applications for judicial review or for permission to apply for judicial review made to the High Court in England and Wales. Any classes of immigration and nationality judicial reviews will therefore be capable of being designated in a direction made by, or on behalf of, the Lord Chief Justice under Schedule 2 to the CRA. *Subsection (2)* amends section 20 of the Tribunals, Courts and Enforcement Act 2007 to remove the same restrictions which apply to the transfer to the Upper Tribunal of applications made to the supervisory jurisdiction of the Court of Session. *Subsection (3)* amends section 25A of the Judicature (Northern Ireland) Act 1978 to remove the same restrictions which apply to transfers from the High Court in Northern Ireland to the Upper Tribunal of applications for judicial review or leave to seek judicial review. *Subsection (4)* repeals section 53 of the Borders, Citizenship and Immigration Act 2009 which introduced the exception for fresh claim cases to the general bar on transferring immigration and nationality cases; given that the generality of such cases may now be transferred there is no need for the exception.