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Borders, Citizenship and Immigration Act 2009

3rd August 2009

The Borders, Citizenship and Immigration Act 2009 (here referred to as 'the 2009 Act') became an Act of the UK Parliament (was 'passed') on 21 July 2009. This information sheet provides information about the provisions in the Act, and explains which of these are now in force and which are still not in force. We do not know when some of the provisions will be brought into force.

How provisions in an Act come into force (are 'commenced')

An Act becomes part of UK law when, having been debated by both Houses of Parliament, it receives Royal Assent. Royal Assent is simply an announcement in parliament. The 2009 Act received Royal Assent on 21 July 2009.

However, the individual provisions (sections and subsections) in an Act do not necessarily come into force when the Act is passed. All Acts have a section explaining how the different provisions will come into force (the 'commencement' section). It may say that some provisions come into force the day the Act is passed. Or it may say that the Government must make an Order (a 'Commencement Order') to bring a particular provision into force.

Not every provision changes the way things work the moment it is brought into force. Sometimes the provision provides a power for Government to make further regulations and it is these regulations, when made, that will set up a new system. Sometimes the provision gives the Government power to do something but does not require that it does this. In such cases Government may want to train staff or prepare new methods of working before it uses its new power.

New border powers to the UK Border Agency

Part 1 of the 2009 Act allows several powers to be transferred from Her Majesty's Revenue and Customs (HMRC) to the UK Border Agency. Part 1 came into force as soon as the 2009 Act was passed. It allows customs officers at ports in the UK to work for the UK Border Agency rather than HMRC and for Immigration officers at ports in the UK to undertake customs work. The UK Border Agency has indicated that it intends to use new powers from 5 August 2009.

Changes to British nationality law

Part 2 of the 2009 Act makes changes to the British Nationality Act 1981. These include changes to:

- the way in which migrants will in future be allowed to become British citizens
- the age at which certain children born overseas may register as British citizens
- allow certain persons born overseas to British mothers before 1961 to register as British citizens
- allow children of parents serving in the British armed forces to acquire British citizenship
- allow British Nationals (Overseas) with no other nationality to register as British citizens

These changes are not yet in force. They are not expected to come into force until July 2011. Further information is given in the “Changes to British Nationality Law” information sheet.

Restrictions on Studies

Section 50 of the 2009 Act came into force on 21 July when the Act was passed. Information about this provision is available from the April 2009 “Restriction on Studies” information sheet.

Fingerprinting powers

Section 51 of the 2009 Act has not yet come into force. When it does, it will allow the UK Border Agency to require anyone subject to an ‘automatic’ deportation order to provide his or her fingerprints. An ‘automatic’ deportation order is an order made under the UK Borders Act 2007, which requires that certain persons convicted and imprisoned in the UK must be deported. Someone who has received one of the listed decisions may be fingerprinted. We do not know when the Government intends to bring section 51 into force.

Detention at Scottish ports

Section 52 of the 2009 Act extends to Scotland certain powers under the UK Borders Act 2007. This section has not come into force yet. When it does, immigration officers at ports in Scotland will (like their counterparts elsewhere in the UK) be empowered to detain anybody for up to three hours if they think the person may be of interest to the police for any criminal offence.

Transfer of ‘fresh claim’ judicial reviews

Section 53 of the 2009 Act requires judicial reviews, which challenge a decision by the UK Border Agency that further submissions submitted by an asylum-seeker do not amount to a fresh claim, to be transferred from the High Court to the Upper Tribunal. This section will not be brought into force until the Asylum and Immigration Tribunal is transferred into the new two-tier Tribunal Service (expected in early 2010). The Upper Tribunal is the second of the two tiers.

Background information is provided in the February 2009 “Transfer of Judicial Reviews” information sheet. However, apart from the fresh claim judicial reviews mentioned here, section 53 will not permit the transfer of any other immigration or nationality law judicial reviews.

Trafficking of babies and very young children

Section 54 of the 2009 Act changes the definition of trafficking for the purposes of criminal law so that anyone who has trafficked a baby or very young child can no longer escape prosecution for the offence of trafficking as has happened under the existing definition. This section is not yet in force.

Duty regarding the welfare of children

Section 55 of the 2009 Act introduces a new duty upon the UK Border Agency and its private contractors to safeguard and promote the welfare of children. This section is expected to come into force in October 2009. Further information is available from the “Children’s Welfare 2” information sheet.