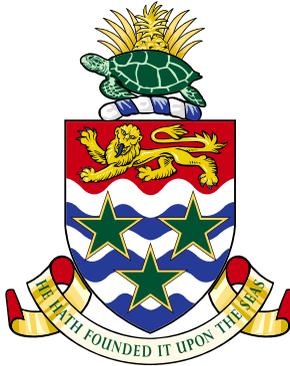


CAYMAN ISLANDS



CUSTOMS AND BORDER CONTROL (AMENDMENT) BILL, 2022

Supplement No. 1 published with Legislation Gazette No. 46 dated 16th November, 2022.

A BILL FOR AN ACT TO AMEND THE CUSTOMS AND BORDER CONTROL ACT (2022 REVISION) TO, AMONG OTHER THINGS, ADJUST PROCEDURES UNDER PART 7 TO ENABLE MORE EXPEDITIOUS PROCESSING OF APPLICATIONS FOR ASYLUM; AND FOR INCIDENTAL AND CONNECTED PURPOSES

PUBLISHING DETAILS

Sponsoring Ministry/Portfolio: Ministry of Border Control and Labour (BCL)



Memorandum of OBJECTS AND REASONS

This Bill seeks to amend the Customs and Border Control Act (2022 Revision) (the “principal Act”) to adjust the procedures relating to applications for asylum with a view to facilitating faster decision-making while continuing to observe the Islands’ obligations under the Convention relating to the Status of Refugees done at Geneva on the 28th July, 1951 and the Protocol to the Convention.

Clause 1 provides the short title of the legislation.

Clause 2 amends section 5 of the principal Act to enable the delegation of the Director’s powers under sections 111(1) and (4B) to an officer of the rank of Assistant Director or above.

Clause 3 amends section 111 of the principal Act to, among other things —

- (a) grant leave to remain in the Islands for three years in the first instance for successful asylum applicants and provide for an application for indefinite leave to remain in the Islands two years after the grant where the person continues to be a refugee;
- (b) where the Director is of the opinion that an application is without substance, empower the Director when refusing the application for asylum to certify the application as clearly unfounded;
- (c) treat applications as withdrawn or abandoned where the applicant fails to attend a scheduled interview or avoids the service of documents unless the applicant demonstrates that the failure or avoidance was beyond the applicant’s control; and
- (d) require, where an application for asylum is refused, that the Director provides reasons for the refusal at the same time that the applicant is notified of the Director’s decision.

Clause 4 inserts new section 111A which provides for the determination of whether an applicant has a “well-founded fear” of persecution by the Director when considering an application under section 111.

Clause 5 inserts new section 111B which provides for offences relating to false or misleading information. The clause seeks to make it an offence to, among other things, make a statement which an applicant knows to be false, to alter any document submitted in support of an application and to possess a forged passport or visa. A person who is convicted of an offence is liable on summary conviction to imprisonment for two years.

Clause 6 amends section 112 of the principal Act to increase the membership of the Refugee Protection Appeals Tribunal and to provide for the Tribunal to sit in more than one division, simultaneously or otherwise, and each division will be presided over either by the chairperson or the deputy chairperson sitting with no fewer than two other members.



The clause also provides for Cabinet to appoint as many secretaries as it considers necessary to the Refugee Protection Appeals Tribunal, including to the divisions of the Tribunal.

Clause 7 amends section 114 of the principal Act to adjust the procedure for appeals. This is in light of the amendment to section 111 to require that reasons are given at the same time as the notification of the Director's decision to refuse an application for asylum.

Clause 8 repeals section 116 and substitutes a new section 116 to include applications that are certified as clearly unfounded by the Director in the matters for which there is a limitation on the right to appeal.

Clause 9 makes transitional provision for applications, appeals and other matters under section 111 which are pending on the day immediately preceding the commencement of the legislation.



CAYMAN ISLANDS



**CUSTOMS AND BORDER CONTROL
(AMENDMENT) BILL, 2022**

Arrangement of Clauses

Clause	Page
1. Short title	7
2. Amendment of section 5 of the Customs and Border Control Act (2022 Revision) - duties of Director.....	7
3. Amendment of section 111 - application for asylum	8
4. Insertion of section 111A - determination of “well-founded fear”	9
5. Insertion of new section 111B - offences relating to false or misleading information.....	10
6. Amendment of section 112 - Refugee Protection Appeals Tribunal.....	10
7. Amendment of section 114 - procedure for appeals	11
8. Repeal and substitution of section 116 - limitation on right to appeal under section 111.....	11
9. Transitional.....	12

CAYMAN ISLANDS

**CUSTOMS AND BORDER CONTROL
(AMENDMENT) BILL, 2022**

A BILL FOR AN ACT TO AMEND THE CUSTOMS AND BORDER CONTROL ACT (2022 REVISION) TO, AMONG OTHER THINGS, ADJUST PROCEDURES UNDER PART 7 TO ENABLE MORE EXPEDITIOUS PROCESSING OF APPLICATIONS FOR ASYLUM; AND FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands.

Short title

1. This Act may be cited as the Customs and Border Control (Amendment) Act, 2022.

Amendment of section 5 of the Customs and Border Control Act (2022 Revision) - duties of Director

2. The *Customs and Border Control Act (2022 Revision)*, in this Act referred to as the “principal Act”, is amended in section 5 as follows —
 - (a) by renumbering the provision as subsection (1); and
 - (b) by inserting after subsection (1), as renumbered, the following subsection —

“(2) The powers and duties conferred upon the Director to determine an application under sections 111(1) and (4B) may be delegated by the

Director at any time to an officer of the rank of Assistant Director or above.”.

Amendment of section 111 - application for asylum

3. The principal Act is amended in section 111 as follows —

(a) by repealing subsection (4) and substituting the following subsections —

“(4) A person whose application under subsection (1) has been successful shall be granted leave to remain in the Islands for three years and the right to work for any employer in any occupation.

(4A) Where the Director is of the opinion that an application under subsection (1) is so clearly without substance that it is bound to fail, in refusing the application the Director may certify it as clearly unfounded.

(4B) A person who is granted leave to remain under subsection (4) may apply to the Director, no sooner than two years from the date of the grant but no later than six months before the expiration of the leave, for indefinite leave to remain in the Islands on the basis that the person continues to be a refugee.

(4C) The Director, in considering an application under subsection (4B) shall have regard to the Refugee Convention and any directions given by the Cabinet relating to applications under subsection (4B).

(4D) An application under subsection (4B) may be refused where the applicant fails, in the opinion of the Director, to demonstrate that the applicant continues to be a refugee.

(4E) Where an application under subsection (1) or (4B) is refused, the Director shall, at the same time of notification of the Director’s decision, provide to the applicant the reasons for the refusal.”;

(b) by repealing subsection (6) and substituting the following subsection —

“(6) Except for a person whose application is certified as clearly unfounded in subsection (4A), a person whose application for asylum has been refused may—

(a) no later than fourteen days after the person is notified of the decision; or

(b) such longer period, not exceeding five days, as the Chairman of the Refugee Protection Appeals Tribunal may, for good cause shown, allow,

appeal to the Refugee Protection Appeals Tribunal against the refusal on the grounds that requiring the person to leave the Islands would be contrary to the Refugee Convention.”; and



(c) by inserting after subsection 7 the following subsection —

“(7A) For the purposes of subsection (7), if an applicant —

- (a) fails, without good reason, to attend a scheduled interview or an appointment with an officer in respect of the application for asylum; or
- (b) avoids service of documents requiring the applicant to attend an interview or appointment in relation to the application,

the application shall be considered as withdrawn or abandoned unless the applicant demonstrates within a reasonable time that the failure or avoidance was beyond the applicant’s control.”.

Insertion of section 111A - determination of “well-founded fear”

4. The principal Act is amended by inserting after section 111 the following section —

“Determination of “well-founded fear”

111A.(1) The Director, in considering an application under sections 111(1) and (4B), shall take the approach set out in subsections (2) and (3) in arriving at a determination on whether an applicant’s fear of persecution is, or remains, well-founded.

(2) The Director shall first determine whether on the balance of probabilities —

- (a) the applicant for asylum has a characteristic that could cause the applicant to fear persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, or has such a characteristic attributed to the applicant by others; and
- (b) the applicant does in fact fear such persecution in the applicant’s country of nationality, (or where the applicant does not have a nationality, the country of their former habitual residence), as a result of that characteristic.

(3) Where the Director determines that the asylum seeker is a person under subsection (2)(a) and fears persecution as described in subsection (2)(b), the Director shall determine whether there is a reasonable likelihood that, if the applicant is returned to the applicant’s country of nationality (or where the applicant does not have a nationality, the country of the applicant’s former habitual residence), the applicant would —

- (a) be persecuted as a result of the characteristic described in subsection (2)(a); and

- (b) would not be afforded protection from persecution by —
 - (i) that country; or
 - (ii) any party, organization, including any international organization, controlling the State or a substantial part of the State.”.

Insertion of new section 111B - offences relating to false or misleading information

5. The principal Act is amended by inserting after section 111A the following section —

“Offences relating to false or misleading information

111B. An applicant under section 111 who —

- (a) makes, causes or allows to be made any, statement or representation which is false in a material particular and which that applicant knows to be false or which the applicant does not believe to be true;
- (b) alters, causes or allows to be altered any certificate, licence, permit or other document submitted in support of an application under section 111; or
- (c) uses or possesses, or causes or allows to be used or possessed, any forged, altered or irregular passport, visa, certificate or other connected document or any endorsement on any of such documents which has been altered or forged,

commits an offence and is liable on summary conviction to imprisonment of two years.”.

Amendment of section 112 - Refugee Protection Appeals Tribunal

6. The principal Act is amended in section 112 as follows —

- (a) by repealing subsection (2) and substituting the following subsections —

“(2) The Tribunal shall consist of the following members —

- (a) a chairperson;
- (b) no more than five deputy chairpersons; and
- (c) a panel of persons,

all of whom shall be appointed by and hold office on such terms and conditions as the Cabinet may determine.

- (2A) For the purposes of exercising its jurisdiction the Tribunal may sit, if the chairperson so directs, in up to six divisions as follows —

- (a) the divisions may sit simultaneously or otherwise;



- (b) each division shall be presided over either by the chairperson or by a deputy chairperson sitting together with no fewer than two other members; and
 - (c) each division shall be deemed to be a fully constituted Appeals Tribunal to hear and determine appeals under this Act.”; and
- (b) by repealing subsection (4) and substituting the following subsection —
- “(4) The Cabinet shall appoint as many secretaries as it considers necessary to the Refugee Protection Appeals Tribunal, including to the divisions of the Tribunal referred to under subsection (2A), and the secretaries shall cause to be recorded and shall keep all minutes of the meetings, proceedings and decisions of that Tribunal, and such secretaries shall have no right to vote.”.

Amendment of section 114 - procedure for appeals

7. The principal Act is amended in section 114 as follows —

- (a) in subsection (1), by deleting the words “and a copy of the Director’s decision” and inserting the words “, a copy of the Director’s decision, the reasons for the refusal provided to the applicant under section 111(4E) and the appellant’s detailed grounds of appeal”;
- (b) by inserting after subsection (1) the following subsection —

“(1A) Upon filing an appeal under subsection (1), the appellant shall serve a copy of the detailed grounds of appeal on the Director.”;
- (c) by repealing subsections (4) and (5);
- (d) in subsection (7), by deleting the words “under subsection (5)” and substituting the words “under subsection (1)”;
- (e) in subsection (8), by repealing paragraph (a);
- (f) by repealing subsection (9) and substituting the following subsection —

“(9) Upon receipt of the Director’s written defence, if any, and any additional information requested from the appellant or Director, the Refugee Protection Appeals Tribunal shall proceed with the hearing of the appeal.”; and
- (g) in subsection (12), by deleting the words “within seven days of” and substituting the words “within a reasonable period of time after”.

Repeal and substitution of section 116 - limitation on right to appeal under section 111

8. The principal Act is amended by repealing section 116 and substituting the following section —

“Limitation on right to appeal under section 111

116. Section 111 does not entitle a person to appeal against a refusal of an application —

- (a) where —
 - (i) the Cabinet has certified that the appellant’s departure and exclusion from the Islands would be in the interest of national security; or
 - (ii) the reason for the refusal was that that person was a person to whom the Refugee Convention did not apply by reason of Article 1(F) of that Convention, and the Cabinet has certified that the disclosure of material on which the refusal was based is not in the interest of national security; and
- (b) where the application was certified as clearly unfounded by the Director under section 111(4A).”.

Transitional

- 9.** Any application, appeal, proceedings or other matter under section 111 which is pending on the day immediately preceding the commencement of the *Customs and Border Control (Amendment) Act, 2022* shall be dealt with as if this amending Act had not come into force.

Passed by the Parliament the day of , 2022.

Speaker

Clerk of the Parliament

