



Borders, Citizenship and Immigration Act 2009

2009 CHAPTER 11

PART 2

CITIZENSHIP

Acquisition of British citizenship by naturalisation

PROSPECTIVE

39 Application requirements: general

- (1) In paragraph 1 of Schedule 1 to the British Nationality Act 1981 (c. 61) (requirements for naturalisation as a British citizen under section 6(1) of that Act), in sub-paragraph (1)(a), omit “, or the alternative requirement specified in sub-paragraph (3) of this paragraph”.
- (2) For sub-paragraph (2) of that paragraph substitute—
 - “(2) The requirements referred to in sub-paragraph (1)(a) of this paragraph are—
 - (a) that the applicant (“A”) was in the United Kingdom at the beginning of the qualifying period;
 - (b) that the number of days on which A was absent from the United Kingdom in each year of the qualifying period does not exceed 90;
 - (c) that A had a qualifying immigration status for the whole of the qualifying period;
 - (d) that on the date of the application A has probationary citizenship leave, permanent residence leave, a qualifying CTA entitlement, a Commonwealth right of abode or a permanent EEA entitlement;
 - (e) that, where on the date of the application A has probationary citizenship leave granted for the purpose of taking employment in the

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- United Kingdom, A has been in continuous employment since the date of the grant of that leave; and
- (f) that A was not at any time in the qualifying period in the United Kingdom in breach of the immigration laws.”
- (3) Omit sub-paragraph (3) of that paragraph.
- (4) [^{F1}In sub-paragraph (1) of paragraph 2 of that Schedule] (discretion of Secretary of State on applications for naturalisation under section 6(1)), for paragraph (a) substitute —
- “(a) treat the applicant as fulfilling the requirement specified in paragraph 1(2)(b) although the number of days on which the applicant was absent from the United Kingdom in a year of the qualifying period exceeds 90;”.
- (5) After paragraph (b) of sub-paragraph (1) of that paragraph, insert—
- “(ba) treat the applicant as fulfilling the requirement specified in paragraph 1(2)(c) where the applicant has had a qualifying immigration status for only part of the qualifying period;
- (bb) treat the applicant as fulfilling the requirement specified in paragraph 1(2)(d) where the applicant has had probationary citizenship leave but it expired in the qualifying period;”.
- (6) Omit paragraph (c) of that sub-paragraph.
- (7) Before paragraph (d) of that sub-paragraph, insert—
- “(ca) treat the applicant as fulfilling the requirement specified in paragraph 1(2)(e) although the applicant has not been in continuous employment since the date of the grant mentioned there;”.
- (8) In paragraph (d) of that sub-paragraph—
- (a) for “1(2)(d)” substitute “ 1(2)(f) ”, and
- (b) for “period there mentioned” substitute “ qualifying period ”.
- (9) [^{F2}For sub-paragraphs (2) and (3) of paragraph 2 substitute]—
- “(2) If in the special circumstances of a particular case that is an armed forces case or an exceptional Crown service case the Secretary of State thinks fit, the Secretary of State may for the purposes of paragraph 1 waive the need to fulfil all or any of the requirements specified in paragraph 1(2).
- (3) An armed forces case is a case where, on the date of the application, the applicant is or has been a member of the armed forces.
- (4) An exceptional Crown service case is a case where—
- (a) the applicant is, on the date of the application, serving outside the United Kingdom in Crown service under the government of the United Kingdom; and
- (b) the Secretary of State considers the applicant's performance in the service to be exceptional.”
- (10) After sub-paragraph (4) (inserted by subsection (9) above) insert—
- “(5) In paragraph 1(2)(e) and sub-paragraph (1)(ca) of this paragraph, “employment” includes self-employment.”

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(11) After paragraph 2 insert—

- “2A
- (1) A person has a qualifying immigration status for the purposes of paragraph 1(2) if the person has—
- (a) qualifying temporary residence leave;
 - (b) probationary citizenship leave;
 - (c) permanent residence leave;
 - (d) a qualifying CTA entitlement;
 - (e) a Commonwealth right of abode; or
 - (f) a temporary or permanent EEA entitlement.
- (2) A person who is required for those purposes to have a qualifying immigration status for the whole of the qualifying period need not have the same qualifying immigration status for the whole of that period.”

Annotations:

Amendments (Textual)

- F1** Words in s. 39(4) substituted (13.5.2014) by [Citizenship \(Armed Forces\) Act 2014 \(c. 8\)](#), **ss. 1(4)(a), 2(2)**
- F2** Words in s. 39(9) substituted (13.5.2014) by [Citizenship \(Armed Forces\) Act 2014 \(c. 8\)](#), **ss. 1(4)(b), 2(2)**

PROSPECTIVE

40 Application requirements: family members etc.

- (1) In section 6 of the British Nationality Act 1981 (c. 61) (acquisition of British citizenship by naturalisation), in subsection (2), for “is married to a British citizen or is the civil partner of a British citizen” substitute “has a relevant family association”.
- (2) After that subsection insert—
- “(3) For the purposes of this section and Schedule 1, a person (“A”) has a relevant family association if A has a connection of a prescribed description to a person of a prescribed description.
- (4) If in the special circumstances of any particular case the Secretary of State thinks fit, the Secretary of State may for the purposes of subsection (3) treat A as having a relevant family association on the date of the application although the relevant family association ceased to exist before that date.”
- (3) For paragraph 3 of Schedule 1 to that Act (requirements for naturalisation as a British citizen under section 6(2) of that Act) substitute—
- “3 (1) Subject to paragraph 4, the requirements for naturalisation as a British citizen under section 6(2) are, in the case of any person (“A”) who applies for it—

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- (a) the requirements specified in sub-paragraph (2) of this paragraph;
 - (b) the requirement specified in sub-paragraph (3) of this paragraph;
 - (c) that A is of good character;
 - (d) that A has a sufficient knowledge of the English, Welsh or Scottish Gaelic language; and
 - (e) that A has sufficient knowledge about life in the United Kingdom.
- (2) The requirements referred to in sub-paragraph (1)(a) are—
- (a) that A was in the United Kingdom at the beginning of the qualifying period;
 - (b) that the number of days on which A was absent from the United Kingdom in each year of the qualifying period does not exceed 90;
 - (c) that, subject to sub-paragraph (5)—
 - (i) A had a relevant family association for the whole of the qualifying period, and
 - (ii) A had a qualifying immigration status for the whole of that period;
 - (d) that on the date of the application—
 - (i) A has probationary citizenship leave, or permanent residence leave, based on A's having the relevant family association referred to in section 6(2), or
 - (ii) A has a qualifying CTA entitlement or a Commonwealth right of abode; and
 - (e) that A was not at any time in the qualifying period in the United Kingdom in breach of the immigration laws.
- (3) The requirement referred to in sub-paragraph (1)(b) is—
- (a) that A's intentions are such that, in the event of a certificate of naturalisation as a British citizen being granted to A, A's home or (if A has more than one) A's principal home will be in the United Kingdom;
 - (b) that A intends, in the event of such a certificate being granted to A, to enter into, or continue in, service of a description mentioned in sub-paragraph (4); or
 - (c) that, in the event of such a certificate being granted to A—
 - (i) the person with whom A has the relevant family association referred to in section 6(2) (“B”) intends to enter into, or continue in, service of a description mentioned in sub-paragraph (4); and
 - (ii) A intends to reside with B for the period during which B is in the service in question.
- (4) The descriptions of service referred to in sub-paragraph (3) are—
- (a) Crown service under the government of the United Kingdom;
 - (b) service under an international organisation of which the United Kingdom, or Her Majesty's government in the United Kingdom, is a member; or
 - (c) service in the employment of a company or association established in the United Kingdom.

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- (5) Where the relevant family association referred to in section 6(2) is (in accordance with regulations under section 41(1)(a)) that A is the partner of a person who is a British citizen or who has permanent residence leave—
- (a) the requirement specified in sub-paragraph (2)(c)(i) is fulfilled only if A was that person's partner for the whole of the qualifying period, and
 - (b) for the purposes of sub-paragraph (2)(c)(ii), A can rely upon having a qualifying immigration status falling within paragraph 4A(1)(a), (b) or (c) only if that partnership is the relevant family association upon which the leave to which the status relates is based.
- (6) For the purposes of sub-paragraph (5), A is a person's partner if—
- (a) that person is A's spouse or civil partner or is in a relationship with A that is of a description that the regulations referred to in that sub-paragraph specify, and
 - (b) the marriage, civil partnership or other relationship satisfies the conditions (if any) that those regulations specify.
- (7) For the purposes of sub-paragraph (5), the relationship by reference to which A and the other person are partners need not be of the same description for the whole of the qualifying period.”
- (4) For paragraph 4 of that Schedule substitute—
- “4 If in the special circumstances of any particular case the Secretary of State thinks fit, the Secretary of State may for the purposes of paragraph 3 do all or any of the following, namely—
- (a) treat A as fulfilling the requirement specified in paragraph 3(2)(b), although the number of days on which A was absent from the United Kingdom in a year of the qualifying period exceeds 90;
 - (b) treat A as having been in the United Kingdom for the whole or any part of any period during which A would otherwise fall to be treated under paragraph 9(1) as having been absent;
 - (c) treat A as fulfilling the requirement specified in paragraph 3(2)(c)(i) (including where it can be fulfilled only as set out in paragraph 3(5)) where a relevant family association of A's has ceased to exist;
 - (d) treat A as fulfilling the requirement specified in paragraph 3(2)(c)(ii) (including where it can be fulfilled only as set out in paragraph 3(5)) where A has had a qualifying immigration status for only part of the qualifying period;
 - (e) treat A as fulfilling the requirement specified in paragraph 3(2)(d) where A has had probationary citizenship leave but it expired in the qualifying period;
 - (f) treat A as fulfilling the requirement specified in paragraph 3(2)(e) although A was in the United Kingdom in breach of the immigration laws in the qualifying period;
 - (g) waive the need to fulfil either or both of the requirements specified in paragraph 3(1)(d) and (e) if the Secretary of State

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considers that because of A's age or physical or mental condition it would be unreasonable to expect A to fulfil that requirement or those requirements;

- (h) waive the need to fulfil all or any of the requirements specified in paragraph 3(2)(a), (b), (c) or (d) (including where paragraph 3(2)(c) can be fulfilled only as set out in paragraph 3(5)) if—
 - (i) on the date of the application, the person with whom A has the relevant family association referred to in section 6(2) is serving in service to which section 2(1)(b) applies, and
 - (ii) that person's recruitment for that service took place in the United Kingdom.”

(5) After that paragraph insert—

- “4A
- (1) Subject to paragraph 3(5), a person has a qualifying immigration status for the purposes of paragraph 3 if the person has—
 - (a) qualifying temporary residence leave based on a relevant family association;
 - (b) probationary citizenship leave based on a relevant family association;
 - (c) permanent residence leave based on a relevant family association;
 - (d) a qualifying CTA entitlement; or
 - (e) a Commonwealth right of abode.
 - (2) For the purposes of paragraph 3 and this paragraph, the leave mentioned in sub-paragraph (1)(a), (b) or (c) is based on a relevant family association if it was granted on the basis of the person having a relevant family association.
 - (3) A person who is required for the purposes of paragraph 3 to have, for the whole of the qualifying period, a qualifying immigration status and a relevant family association need not, for the whole of that period—
 - (a) have the same qualifying immigration status; or
 - (b) (subject to paragraph 3(5)) have the same relevant family association.
 - (4) Where, by virtue of sub-paragraph (3)(a), a person relies upon having more than one qualifying immigration status falling within sub-paragraph (1)(a), (b) or (c)—
 - (a) subject to paragraph 3(5), it is not necessary that the leave to which each status relates is based on the same relevant family association, and
 - (b) in a case where paragraph 3(5) applies, the relationship by reference to which the persons referred to in paragraph 3(5) are partners need not be of the same description in respect of each grant of leave.”

41 The qualifying period

- (1) After paragraph 4A of Schedule 1 to the British Nationality Act 1981 (c. 61) (inserted by section 40(5) above), insert—

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- 4B (1) The qualifying period for the purposes of paragraph 1 or 3 is a period of years which ends with the date of the application in question.
- (2) The length of the period is determined in accordance with the following provisions of this paragraph.
- (3) In the case of an applicant who does not meet the activity condition, the number of years in the period is—
- (a) 8, in a case within paragraph 1;
 - (b) 5, in a case within paragraph 3.
- (4) In the case of an applicant who meets the activity condition, the number of years in the period is—
- (a) 6, in a case within paragraph 1;
 - (b) 3, in a case within paragraph 3.
- (5) The applicant meets the activity condition if the Secretary of State is satisfied that the applicant—
- (a) has participated otherwise than for payment in prescribed activities; or
 - (b) is to be treated as having so participated.”
- (2) In section 41 of that Act (regulations etc.), in subsection (1), after paragraph (bb) insert—
- “(bc) for amending paragraph 4B(3)(a) or (b) or (4)(a) or (b) of Schedule 1 to substitute a different number for the number for the time being specified there;
 - (bd) for determining whether a person has, for the purposes of an application for naturalisation under section 6, participated in activities prescribed for the purposes of paragraph 4B(5)(a) of Schedule 1;
 - (be) for determining whether a person is to be treated for the purposes of such an application as having so participated;”.
- (3) After subsection (1A) of that section insert—
- “(1B) Regulations under subsection (1)(bc) may make provision so that—
- (a) the number specified in sub-paragraph (3)(a) of paragraph 4B of Schedule 1 is the same as the number specified in sub-paragraph (4) (a) of that paragraph;
 - (b) the number specified in sub-paragraph (3)(b) of that paragraph is the same as the number specified in sub-paragraph (4)(b) of that paragraph.
- (1C) Regulations under subsection (1)(bd) or (be)—
- (a) may make provision that applies in relation to time before the commencement of section 41 of the Borders, Citizenship and Immigration Act 2009;
 - (b) may enable the Secretary of State to make arrangements for such persons as the Secretary of State thinks appropriate to determine whether, in accordance with those regulations, a person has, or (as the case may be) is to be treated as having, participated in an activity.”

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(4) In subsection (7) of that section, after “this section” insert “ (other than regulations referred to in subsection (8)) ”.

(5) After subsection (7) of that section insert—

“(8) Any regulations (whether alone or with other provision)—

(a) under subsection (1)(a) for prescribing activities for the purposes of paragraph 4B(5)(a) of Schedule 1; or

(b) under subsection (1)(bc), (bd) or (be),

may not be made unless a draft has been laid before and approved by a resolution of each House of Parliament.”

Annotations:

Commencement Information

II [S. 41\(5\)](#) in force at 27.10.2014 for specified purposes by [S.I. 2014/2634](#), [art. 2\(a\)](#)

Acquisition of British citizenship by birth

42 Children born in UK etc. to members of the armed forces

(1) Section 1 of the British Nationality Act 1981 (c. 61) (acquisition of British citizenship by birth or adoption) is amended as follows.

(2) After subsection (1) insert—

“(1A) A person born in the United Kingdom or a qualifying territory on or after the relevant day shall be a British citizen if at the time of the birth his father or mother is a member of the armed forces.”

(3) In subsection (3), after “subsection (1)” insert “, (1A) ”.

(4) After subsection (3) insert—

“(3A) A person born in the United Kingdom on or after the relevant day who is not a British citizen by virtue of subsection (1), (1A) or (2) shall be entitled to be registered as a British citizen if, while he is a minor—

(a) his father or mother becomes a member of the armed forces; and

(b) an application is made for his registration as a British citizen”.

(5) In subsection (4), after “subsection (1)” insert “, (1A) ”.

(6) After subsection (8) insert—

“(9) The relevant day for the purposes of subsection (1A) or (3A) is the day appointed for the commencement of section 42 of the Borders, Citizenship and Immigration Act 2009 (which inserted those subsections).”

Annotations:

Commencement Information

I2 [S. 42](#) in force at 13.1.2010 by [S.I. 2009/2731](#), [art. 4\(a\)](#)

Status: This version of this part contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the Borders,
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Acquisition of British citizenship etc. by registration

43 Minors

- (1) Section 3 of the British Nationality Act 1981 (c. 61) (acquisition by registration: minors) is amended as follows.
- (2) In subsection (2), for “within the period of twelve months from the date of the birth” substitute “ while he is a minor ”.
- (3) Omit subsection (4).

Annotations:

Commencement Information

I3 S. 43 in force at 13.1.2010 by S.I. 2009/2731, art. 4(b)

44 British Nationals (Overseas) without other citizenship

- (1) Section 4B of the British Nationality Act 1981 (acquisition by registration: certain persons without other citizenship) is amended as follows.
- (2) In subsection (1)—
 - (a) omit “or” immediately before paragraph (c), and
 - (b) after that paragraph insert “, or
 - (d) British National (Overseas)”.
- (3) In subsection (2)(c), for “4th July 2002” substitute “ the relevant day ”.
- (4) After subsection (2), insert—
 - “(3) For the purposes of subsection (2)(c), the “relevant day” means—
 - (a) in the case of a person to whom this section applies by virtue of subsection (1)(d) only, 19th March 2009, and
 - (b) in any other case, 4th July 2002.”

Annotations:

Commencement Information

I4 S. 44 in force at 13.1.2010 by S.I. 2009/2731, art. 4(c)

45 Descent through the female line

- (1) Section 4C of the British Nationality Act 1981 (the title to which becomes “Acquisition by registration: certain persons born before 1983”) is amended as follows.
- (2) In subsection (2), omit “after 7th February 1961 and”.
- (3) For subsection (3) substitute—
 - “(3) The second condition is that the applicant would at some time before 1st January 1983 have become a citizen of the United Kingdom and Colonies—

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- (a) under section 5 of, or paragraph 3 of Schedule 3 to, the 1948 Act if assumption A had applied,
- (b) under section 12(3), (4) or (5) of that Act if assumption B had applied and as a result of its application the applicant would have been a British subject immediately before 1st January 1949, or
- (c) under section 12(2) of that Act if one or both of the following had applied—
 - (i) assumption A had applied;
 - (ii) assumption B had applied and as a result of its application the applicant would have been a British subject immediately before 1st January 1949.

(3A) Assumption A is that—

- (a) section 5 or 12(2) of, or paragraph 3 of Schedule 3 to, the 1948 Act (as the case may be) provided for citizenship by descent from a mother in the same terms as it provided for citizenship by descent from a father, and
- (b) references in that provision to a father were references to the applicant's mother.

(3B) Assumption B is that—

- (a) a provision of the law at some time before 1st January 1949 which provided for a nationality status to be acquired by descent from a father provided in the same terms for its acquisition by descent from a mother, and
- (b) references in that provision to a father were references to the applicant's mother.

(3C) For the purposes of subsection (3B), a nationality status is acquired by a person (“P”) by descent where its acquisition—

- (a) depends, amongst other things, on the nationality status of one or both of P's parents, and
- (b) does not depend upon an application being made for P's registration as a person who has the status in question.

(3D) For the purposes of subsection (3), it is not to be assumed that any registration or other requirements of the provisions mentioned in that subsection or in subsection (3B) were met.”

(4) After subsection (4) insert—

“(5) For the purposes of the interpretation of section 5 of the 1948 Act in its application in the case of assumption A to a case of descent from a mother, the reference in the proviso to subsection (1) of that section to “a citizen of the United Kingdom and Colonies by descent only” includes a reference to a female person who became a citizen of the United Kingdom and Colonies by virtue of—

- (a) section 12(2), (4) or (6) only of the 1948 Act,
- (b) section 13(2) of that Act,
- (c) paragraph 3 of Schedule 3 to that Act, or
- (d) section 1(1)(a) or (c) of the British Nationality (No. 2) Act 1964.”

Status: This version of this part contains provisions that are prospective.
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Annotations:

Commencement Information

I5 S. 45 in force at 13.1.2010 by S.I. 2009/2731, art. 4(d)

46 Children born outside UK etc. to members of the armed forces

After section 4C of the British Nationality Act 1981 (c. 61) insert—

“4D Acquisition by registration: children of members of the armed forces

- (1) A person (“P”) born outside the United Kingdom and the qualifying territories on or after the relevant day is entitled to be registered as a British citizen if—
 - (a) an application is made for P's registration under this section; and
 - (b) each of the following conditions is satisfied.
- (2) The first condition is that, at the time of P's birth, P's father or mother was—
 - (a) a member of the armed forces; and
 - (b) serving outside the United Kingdom and the qualifying territories.
- (3) The second condition is that, if P is a minor on the date of the application, the consent of P's father and mother to P's registration as a British citizen has been signified in the prescribed manner.
- (4) But if P's father or mother has died on or before the date of the application, the reference in subsection (3) to P's father and mother is to be read as a reference to either of them.
- (5) The Secretary of State may, in the special circumstances of a particular case, waive the need for the second condition to be satisfied.
- (6) The relevant day for the purposes of this section is the day appointed for the commencement of section 46 of the Borders, Citizenship and Immigration Act 2009 (which inserted this section).”

Annotations:

Commencement Information

I6 S. 46 in force at 13.1.2010 by S.I. 2009/2731, art. 4(e)

47 Good character requirement

(1) After section 41 of the British Nationality Act 1981 insert—

“41A Registration: requirement to be of good character

- (1) An application for registration of an adult or young person as a British citizen under section 1(3), (3A) or (4), 3(1), (2) or (5), 4(2) or (5), 4A, 4C, 4D, 5, 10(1) or (2) or 13(1) or (3) must not be granted unless the Secretary of State is satisfied that the adult or young person is of good character.

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- (2) An application for registration of an adult or young person as a British overseas territories citizen under section 15(3) or (4), 17(1) or (5), 22(1) or (2) or 24 must not be granted unless the Secretary of State is satisfied that the adult or young person is of good character.
- (3) An application for registration of an adult or young person as a British Overseas citizen under section 27(1) must not be granted unless the Secretary of State is satisfied that the adult or young person is of good character.
- (4) An application for registration of an adult or young person as a British subject under section 32 must not be granted unless the Secretary of State is satisfied that the adult or young person is of good character.
- (5) In this section, “adult or young person” means a person who has attained the age of 10 years at the time when the application is made.”
- (2) In section 1 of the Hong Kong (War Wives and Widows) Act 1996 (c. 41) (acquisition of British citizenship), in subsection (1)—
- (a) omit “and” immediately before paragraph (b), and
 - (b) after that paragraph insert “; and
 - (c) the Secretary of State is satisfied that she is of good character”.
- (3) In section 1 of the British Nationality (Hong Kong) Act 1997 (c. 20) (acquisition of British citizenship), after subsection (5) insert—
- “(5A) An adult or young person shall not be registered under subsection (1) unless the Secretary of State is satisfied that the adult or young person is of good character.
- (5B) In subsection (5A), “adult or young person” means a person who has attained the age of 10 years at the time when the application for registration is made.”
- (4) In section 131 of the Nationality, Immigration and Asylum Act 2002 (c. 41) (supply of police information), for paragraph (b) substitute—
- “(b) determining whether, for the purposes of an application referred to in section 41A of the British Nationality Act 1981, the person for whose registration the application is made is of good character;
 - (ba) determining whether, for the purposes of an application under section 1 of the Hong Kong (War Wives and Widows) Act 1996, the woman for whose registration the application is made is of good character;
 - (bb) determining whether, for the purposes of an application under section 1 of the British Nationality (Hong Kong) Act 1997 for the registration of an adult or young person within the meaning of subsection (5A) of that section, the person is of good character;”.
- (5) In section 40 of the UK Borders Act 2007 (c. 30) (supply of Revenue and Customs information), in subsection (1), for paragraph (h) substitute—
- “(h) determining whether, for the purposes of an application referred to in section 41A of the British Nationality Act 1981, the person for whose registration the application is made is of good character;
 - (ha) determining whether, for the purposes of an application under section 1 of the Hong Kong (War Wives and Widows) Act 1996,

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- the woman for whose registration the application is made is of good character;
- (hb) determining whether, for the purposes of an application under section 1 of the British Nationality (Hong Kong) Act 1997 for the registration of an adult or young person within the meaning of subsection (5A) of that section, the person is of good character;”.

Annotations:

Commencement Information

I7 S. 47 in force at 13.1.2010 by S.I. 2009/2731, art. 4(f)

Interpretation etc.

48 Meaning of references to being in breach of immigration laws

- (1) After section 50 of the British Nationality Act 1981 (c. 61) insert—

“50A Meaning of references to being in breach of immigration laws

- (1) This section applies for the construction of a reference to being in the United Kingdom “in breach of the immigration laws” in—
- (a) section 4(2) or (4);
 - (b) section 50(5); or
 - (c) Schedule 1.
- (2) It applies only for the purpose of determining on or after the relevant day—
- (a) whether a person born on or after the relevant day is a British citizen under section 1(1),
 - (b) whether, on an application under section 1(3) or 4(2) made on or after the relevant day, a person is entitled to be registered as a British citizen, or
 - (c) whether, on an application under section 6(1) or (2) made on or after the relevant day, the applicant fulfils the requirements of Schedule 1 for naturalisation as a British citizen under section 6(1) or (2).
- (3) But that is subject to section 48(3)(d) and (4) of the Borders, Citizenship and Immigration Act 2009 (saving in relation to section 11 of the Nationality, Immigration and Asylum Act 2002).
- (4) A person is in the United Kingdom in breach of the immigration laws if (and only if) the person—
- (a) is in the United Kingdom;
 - (b) does not have the right of abode in the United Kingdom within the meaning of section 2 of the Immigration Act 1971;
 - (c) does not have leave to enter or remain in the United Kingdom (whether or not the person previously had leave);
 - (d) does not have a qualifying CTA entitlement;

Status: This version of this part contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Borders, Citizenship and Immigration Act 2009, Part 2. (See end of Document for details)

- (e) is not entitled to reside in the United Kingdom by virtue of any provision made under section 2(2) of the European Communities Act 1972 (whether or not the person was previously entitled);
 - (f) is not entitled to enter and remain in the United Kingdom by virtue of section 8(1) of the Immigration Act 1971 (crew) (whether or not the person was previously entitled); and
 - (g) does not have the benefit of an exemption under section 8(2) to (4) of that Act (diplomats, soldiers and other special cases) (whether or not the person previously had the benefit of an exemption).
- (5) For the purposes of subsection (4)(d), a person has a qualifying CTA entitlement if the person—
- (a) is a citizen of the Republic of Ireland,
 - (b) last arrived in the United Kingdom on a local journey (within the meaning of the Immigration Act 1971) from the Republic of Ireland, and
 - (c) on that arrival, was a citizen of the Republic of Ireland and was entitled to enter without leave by virtue of section 1(3) of the Immigration Act 1971 (entry from the common travel area).
- (6) Section 11(1) of the Immigration Act 1971 (person deemed not to be in the United Kingdom before disembarkation, while in controlled area or while under immigration control) applies for the purposes of this section as it applies for the purposes of that Act.
- (7) This section is without prejudice to the generality of—
- (a) a reference to being in a place outside the United Kingdom in breach of immigration laws, and
 - (b) a reference in a provision other than one specified in subsection (1) to being in the United Kingdom in breach of immigration laws.
- (8) The relevant day for the purposes of subsection (2) is the day appointed for the commencement of section 48 of the Borders, Citizenship and Immigration Act 2009 (which inserted this section).”
- (2) Section 11 of the Nationality, Immigration and Asylum Act 2002 (c. 41) (“the 2002 Act”) (unlawful presence in the United Kingdom) ceases to have effect.
- (3) Notwithstanding its repeal, section 11 of the 2002 Act is to continue to have effect for the purpose of determining on or after the relevant day—
- (a) whether a person born before the relevant day is a British citizen under section 1(1) of the British Nationality Act 1981 (c. 61),
 - (b) whether, on an application under section 1(3) or 4(2) of that Act made but not determined before the relevant day, a person is entitled to be registered as a British citizen,
 - (c) whether, on an application under section 6(1) or (2) of that Act made but not determined before the relevant day, the applicant fulfils the requirements of Schedule 1 for naturalisation as a British citizen under section 6(1) or (2) of that Act, or
 - (d) whether, in relation to an application under section 1(3) or 6(1) or (2) of that Act made on or after the relevant day, a person was in the United Kingdom “in breach of the immigration laws” at a time before 7 November 2002 (the date of commencement of section 11 of the 2002 Act).

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Changes to legislation: There are currently no known outstanding effects for the Borders,
Citizenship and Immigration Act 2009, Part 2. (See end of Document for details)

- (4) Where section 11 of the 2002 Act continues to have effect by virtue of paragraph (d) of subsection (3) for the purpose of determining on or after the relevant day the matter mentioned in that paragraph, section 50A of the British Nationality Act 1981 is not to apply for the purpose of determining that matter.
- (5) The relevant day for the purposes of subsection (3) is the day appointed for the commencement of this section.
- (6) In paragraph 7(a) of Schedule 3 to the 2002 Act (definition of persons unlawfully in the UK who are ineligible for support), for “section 11” substitute “ section 50A of the British Nationality Act 1981 ”.

Annotations:

Commencement Information

18 S. 48 in force at 13.1.2010 by S.I. 2009/2731, art. 4(g)

49 Other interpretation etc.

- (1) In section 50 of the British Nationality Act 1981 (c. 61) (interpretation), after subsection (1), insert—
 - “(1A) Subject to subsection (1B), references in this Act to being a member of the armed forces are references to being—
 - (a) a member of the regular forces within the meaning of the Armed Forces Act 2006, or
 - (b) a member of the reserve forces within the meaning of that Act subject to service law by virtue of paragraph (a), (b) or (c) of section 367(2) of that Act.
 - (1B) A person is not to be regarded as a member of the armed forces by virtue of subsection (1A) if the person is treated as a member of a regular or reserve force by virtue of—
 - (a) section 369 of the Armed Forces Act 2006, or
 - (b) section 4(3) of the Visiting Forces (British Commonwealth) Act 1933.”
- (2) In Schedule 1 to that Act (requirements for naturalisation as a British citizen), in paragraph 9(1), for “paragraph 2(b)” substitute “ paragraph 2(1)(b) or 4(b) ”.
- (3) After paragraph 10 of that Schedule insert—
 - “11 (1) This paragraph applies for the purposes of this Schedule.
 - (2) A person has qualifying temporary residence leave if—
 - (a) the person has limited leave to enter or remain in the United Kingdom, and
 - (b) the leave is granted for a purpose by reference to which a grant of probationary citizenship leave may be made.
 - (3) A person has probationary citizenship leave if—

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Changes to legislation: There are currently no known outstanding effects for the Borders, Citizenship and Immigration Act 2009, Part 2. (See end of Document for details)

- (a) the person has limited leave to enter or remain in the United Kingdom, and
 - (b) the leave is of a description identified in rules under section 3 of the Immigration Act 1971 as “probationary citizenship leave”, and the reference in sub-paragraph (2) to a grant of probationary citizenship leave is to be construed accordingly.
- (4) A person has permanent residence leave if the person has indefinite leave to enter or remain in the United Kingdom.
- (5) A person has a qualifying CTA entitlement if the person—
- (a) is a citizen of the Republic of Ireland,
 - (b) last arrived in the United Kingdom on a local journey (within the meaning of the Immigration Act 1971) from the Republic of Ireland, and
 - (c) on that arrival, was a citizen of the Republic of Ireland and was entitled to enter without leave by virtue of section 1(3) of the Immigration Act 1971 (entry from the common travel area).
- (6) A person has a Commonwealth right of abode if the person has the right of abode in the United Kingdom by virtue of section 2(1)(b) of the Immigration Act 1971.
- (7) A person has a permanent EEA entitlement if the person is entitled to reside in the United Kingdom permanently by virtue of any provision made under section 2(2) of the European Communities Act 1972.
- (8) A person has a temporary EEA entitlement if the person does not have a permanent EEA entitlement but is entitled to reside in the United Kingdom by virtue of any provision made under section 2(2) of the European Communities Act 1972.
- (9) A reference in this paragraph to having leave to enter or remain in the United Kingdom is to be construed in accordance with the Immigration Act 1971.”

Annotations:

Commencement Information

19 S. 49(1) in force at 13.1.2010 by S.I. 2009/2731, art. 4(h)

Status:

This version of this part contains provisions that are prospective.

Changes to legislation:

There are currently no known outstanding effects for the Borders, Citizenship and Immigration Act 2009, Part 2.