



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, [^{F1}the relevant status as an Irish citizen], a Commonwealth right of abode ^{F2}...;
 - (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) [^{F3}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) [^{F4}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;
 - [^{F5}(d) the relevant status as an Irish citizen, or]
 - (e) a Commonwealth right of abode; or
 - ^{F6}(f)
- (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.”

Textual Amendments

- F1** Words in s. 39(2) substituted (31.12.2020) by [The Immigration and Social Security Co-ordination \(EU Withdrawal\) Act 2020 \(Consequential, Saving, Transitional and Transitory Provisions\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1309\)](#), regs. 1(2), **79(2)(a)**
- F2** Words in s. 39(2) omitted (31.12.2020) by virtue of [The Immigration and Social Security Co-ordination \(EU Withdrawal\) Act 2020 \(Consequential, Saving, Transitional and Transitory Provisions\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1309\)](#), regs. 1(2), **79(2)(b)**
- F3** Words in s. 39(4) substituted (13.5.2014) by [Citizenship \(Armed Forces\) Act 2014 \(c. 8\)](#), **ss. 1(4)(a), 2(2)**
- F4** Words in s. 39(9) substituted (13.5.2014) by [Citizenship \(Armed Forces\) Act 2014 \(c. 8\)](#), **ss. 1(4)(b), 2(2)**
- F5** Words in s. 39(11) substituted (31.12.2020) by [The Immigration and Social Security Co-ordination \(EU Withdrawal\) Act 2020 \(Consequential, Saving, Transitional and Transitory Provisions\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1309\)](#), regs. 1(2), **79(3)(a)**
- F6** Words in s. 39(11) omitted (31.12.2020) by virtue of [The Immigration and Social Security Co-ordination \(EU Withdrawal\) Act 2020 \(Consequential, Saving, Transitional and Transitory Provisions\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1309\)](#), regs. 1(2), **79(3)(b)**

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.

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- (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—
- (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 [^{F7}the relevant status as an Irish citizen] 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

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- 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.
- (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;

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- (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 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;
 - [^{F8}(d) the relevant status as an Irish citizen; 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)—

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- (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.”

Textual Amendments

- F7** Words in s. 40(3) substituted (31.12.2020) by [The Immigration and Social Security Co-ordination \(EU Withdrawal\) Act 2020 \(Consequential, Saving, Transitional and Transitory Provisions\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1309\)](#), regs. 1(2), [79\(4\)](#)
- F8** Words in s. 40(5) substituted (31.12.2020) by [The Immigration and Social Security Co-ordination \(EU Withdrawal\) Act 2020 \(Consequential, Saving, Transitional and Transitory Provisions\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1309\)](#), regs. 1(2), [79\(5\)](#)

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—

- 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;

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- (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.”

(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.”

Commencement Information

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

Status:

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