



# 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, [<sup>F1</sup>the relevant status as an Irish citizen], a Commonwealth right of abode <sup>F2</sup>...;
    - (e) that, where on the date of the application A has probationary citizenship leave granted for the purpose of taking employment in the

*Status: This version of this provision is prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Borders, Citizenship and Immigration Act 2009, Section 39. (See end of Document for details)*

- 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) [<sup>F3</sup>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) [<sup>F4</sup>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.”

*Status: This version of this provision is prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Borders, Citizenship and Immigration Act 2009, Section 39. (See end of Document for details)*

(11) After paragraph 2 insert—

- “<sup>2A</sup>(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;
  - [<sup>F5</sup>(d) the relevant status as an Irish citizen, or]
  - (e) a Commonwealth right of abode; or
  - <sup>F6</sup>(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)**

**Status:**

This version of this provision is prospective.

**Changes to legislation:**

There are currently no known outstanding effects for the *Borders, Citizenship and Immigration Act 2009*, Section 39.