

# **BORDERS, CITIZENSHIP AND IMMIGRATION ACT 2009**

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## **EXPLANATORY NOTES**

### **COMMENTARY**

#### **Part 2: Citizenship**

##### **Acquisition of British citizenship etc. by registration**

##### ***Section 45: Descent through the female line***

171. **Section 45** amends section 4C of the BNA 1981 to allow applicants born before 7 February 1961 to be able to register as British citizens, provided they meet the other requirements in section 4C. The amendments made by the section also widen the scope of section 4C so that it is no longer restricted to the case where the applicant would otherwise have become a CUKC under section 5 of the BNA 1948.
172. Section 4C, as inserted by section 13 of the NIAA 2002, conferred an entitlement to registration as a British citizen on persons born between 7 February 1961 and 1 January 1983 who, but for the inability (at that time) of women to pass on their citizenship, would have acquired British citizenship automatically when the BNA 1981 came into force.
173. Section 45(2) removes the 7 February 1961 cut-off point from section 4C, so that persons born before that date can apply for registration as British citizens. The requirement that the applicant must have been born before 1 January 1983 is, however, retained since sections 1(1) and 2(1) of the BNA 1981 already provide for persons born after this date to acquire citizenship by descent from their mother or father.
174. Section 45(3) inserts into section 4C of the BNA 1981 new subsections (3) to (3D). Those subsections examine whether the applicant would have become a CUKC under various provisions of the BNA 1948 if certain assumptions had been applied. Under those assumptions certain provisions are read as if they provided for citizenship to pass by descent from the applicant's mother in the same terms as they provided for descent from the applicant's father. The references to the applicant's mother limit the extent of the section; an applicant must show that his or her mother had the relevant type of status (which she would have been able to transmit had the law permitted descent from mothers in the same way as fathers).
175. Subsections (3) to (3C) cover both cases where certain provisions of the BNA 1948 provided expressly for descent from a father only (see assumption A in subsection (3A)) and those cases where certain provisions of the BNA 1948 enabled an applicant to become a CUKC if the applicant had a particular nationality status immediately before commencement of the BNA 1948 and a provision of legislation prior to the BNA 1948 prevented the applicant from acquiring that status by descent from his or her mother in the same terms as it provided for descent from the applicant's father (see assumption B in subsection (3B)).

*These notes refer to the Borders, Citizenship and Immigration  
Act 2009 (c.11) which received Royal Assent on 21 July 2009*

176. Subsection (3C) clarifies that assumption B only applies to cases of automatic acquisition of citizenship, and not to provisions where the applicant's acquisition of the nationality status depended upon an application for registration as such.
177. Subsection (3D) provides that, for the purposes of determining whether the applicant would have become a CUKC, it should not be assumed that any registration or other requirements were met, if in fact they were not. For example if, applying the assumptions, the applicant would have become a CUKC had the applicant's birth been registered at a particular time - and it was not in fact so registered - it should not be assumed that the birth would have been registered had the assumptions applied at the relevant time.
178. Subsection (4) inserts a new subsection (5) into section 4C. For the purposes of interpreting section 5 of the BNA 1948 when applying section 4C of the BNA 1981, where a female person (that is, the applicant's mother) became a CUKC under the provisions listed in subsection (5)(a) to (d), she should be deemed to be a CUKC by descent only (and not a CUKC otherwise than by descent). This replicates the existing position for a male person (that is, the applicant's father) who becomes a CUKC under those same provisions.