



# Borders, Citizenship and Immigration Act 2009

## 2009 CHAPTER 11

VALID FROM 13/01/2010

### PART 2

#### CITIZENSHIP

VALID FROM 27/10/2014

#### *Acquisition of British citizenship by naturalisation*

PROSPECTIVE

#### <sup>F1</sup>39 **Application requirements: general**

.....

#### **Textual Amendments**

- F1** S. 39 omitted (28.6.2022) by virtue of [Nationality and Borders Act 2022 \(c. 36\)](#), [ss. 9\(3\)\(a\)](#), [87\(1\)](#); S.I. 2022/590, [regs. 1\(2\)](#), [2](#), [Sch. 1 para. 8](#) (with [Sch. 2 para. 3](#))

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## PROSPECTIVE

## **F240 Application requirements: family members etc.**

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### **Textual Amendments**

**F2** S. 40 omitted (28.6.2022) by virtue of [Nationality and Borders Act 2022 \(c. 36\)](#), ss. [9\(3\)\(a\)](#), [87\(1\)](#); [S.I. 2022/590](#), regs. [1\(2\)](#), [2](#), Sch. [1 para. 8](#) (with Sch. [2 para. 3](#))

## **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—

### **“The qualifying period for naturalisation as a British citizen under section 6**

- 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.”

### *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—

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“(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).”

*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).

**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.”

**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—

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- “(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—
- (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

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(d) section 1(1)(a) or (c) of the British Nationality (No. 2) Act 1964.”

#### 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).”

#### 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.
- (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.

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- (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, 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;”.



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*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;
  - (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,



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- (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).
- (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 ”.

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#### **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—

- (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).

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- (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.”

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