

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

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## **EXPLANATORY NOTES**

### **COMMENTARY**

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

##### **Interpretation**

##### ***Section 48: Meaning of references to being in breach of immigration laws***

186. **Section 48** inserts a new section 50A into the BNA 1981, the effect of which is to move the definition of being “in breach of the immigration laws” from section 11 of the NIAA 2002 to the BNA 1981. At the same time, section 48 replaces the references in section 11(2)(d) and (e) to being a qualified person (or family member of such a person) within the meaning of the **Immigration (European Economic Area) Regulations 2000 (S.I. 2000/2326)** (now repealed) with a reference to having an entitlement to reside by virtue of any provision made under section 2(2) of the European Communities Act 1972. Section 48 also adds a new limb to the list of persons who are not considered to be in breach of the immigration laws to cover those with a qualifying CTA entitlement. New section 50A(5) defines when a person is considered to have a qualifying CTA entitlement for these purposes.
187. New section 50A(2) and (3) provide that the revised definition shall apply to the sections of the BNA 1981 listed in subsection (2) after the section is commenced. In relation to persons born before commencement, or specified applications made before commencement but not decided until after commencement, section 48(3) provides that section 11 of the NIAA 2002 shall continue to apply.
188. Furthermore section 48(3)(d) and (4) provide that for the purposes of determining whether a person was in breach of the immigration laws prior to 7 November 2002, section 11 of the NIAA 2002 (including the provision in section 11(4)) shall continue to apply instead of the new section 50A.
189. **Section 48(6)** makes a consequential amendment to Schedule 3 to the NIAA 2002, replacing the reference to section 11 of that Act with a reference to new section 50A of the BNA 1981.

##### ***Section 49: Other interpretation etc.***

190. **Section 49** amends section 50 of, and Schedule 1 to, the BNA 1981 to introduce various definitions which are relevant to the amendments made to that Act by this Part.
191. **Section 49(1)** inserts into section 50 of the BNA 1981 a definition of “member of the armed forces”. This will affect those who apply for naturalisation as a British citizen under section 6(1) of the BNA 1981, as well as new section 1(1A) and (3A) of the BNA 1981 (for children born in the UK to a member of the armed forces) and new section 4D of the BNA 1981 (for children born outside the UK to a member of the armed forces).

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

192. [Section 49\(3\)](#) inserts new paragraph 11 into Schedule 1 to the BNA 1981. This defines qualifying temporary residence leave; probationary citizenship leave; permanent residence leave; a qualifying CTA entitlement; a Commonwealth right of abode; a permanent EEA entitlement and a temporary EEA entitlement for the purposes of being able to apply for a certificate of naturalisation under section 6 of the BNA 1981.