



Borders, Citizenship and Immigration Act 2009

2009 CHAPTER 11

PART 2

CITIZENSHIP

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).

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- (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,
 - (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—

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- (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 ”.

Commencement Information

II S. 48 in force at 13.1.2010 by S.I. 2009/2731, art. 4(g)

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.”

^{F1}(2)

^{F2}(3)

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Textual Amendments

- F1** S. 49(2) 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](#))
- F2** S. 49(3) 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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Commencement Information

- I2** S. 49(1) in force at 13.1.2010 by [S.I. 2009/2731](#), [art. 4\(h\)](#)

Changes to legislation:

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 54A(3A)(3B) inserted by [2023 c. 37 s. 14](#)