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British citizenship and the new Borders, Citizenship and
Immigration Act 2009

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British citizenship and the new Borders, Citizenship and Immigration Act 2009



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THE BORDERS, CITIZENSHIP AND IMMIGRATION Act 2009 (the 2009 Act) received Royal Assent on 21 July. The 2009 Act provides a new regime for foreign national workers applying for British citizenship in the UK.

LEGISLATION: OLD AND NEW

Currently, migrants with leave to remain in the UK in an employment category (participants in the highly skilled migrant programme, work permit holders, Tier 1 (general) migrants, Tier 2 (general) migrants and Tier 2 (intra-company transfer) migrants) can apply for indefinite leave to remain, following five years' continuous residence. After a further 12 months in the UK with indefinite leave to remain, migrants are eligible to apply for British citizenship.

Under changes introduced by the 2009 Act, the following steps must be taken by a migrant to achieve British citizenship:

- 1) temporary residence for five years, eg Tier 1 or Tier 2;
- 2) probationary citizenship; and
- 3) British citizenship or permanent residence.

Although the 2009 Act is now in force, the UK Border Agency has yet to provide guidance on the practical steps for naturalising as a British citizen. We do know that the 2009 Act will replace indefinite leave to remain with 'probationary citizenship' as the step preceding an application for British citizenship. The UK Border Agency has suggested that this will entail a points-based approach to eligibility for British citizenship, awarding points to applicants for acquiring different 'skills and attributes' and 'active citizenship', such as community, voluntary and civic work. Current proposals for probationary citizenship will see applicants awarded points for 'working hard, obeying the law, and speaking English'. Probationary citizenship will be held for a minimum of one year and a maximum of three years.

Further guidance from the UK Border Agency will clarify exactly what will be expected of migrants. However, as this new 'path to citizenship' will not be introduced until July 2011, it is uncertain when this guidance will be released.

Those who are in the UK with indefinite leave to remain at the time that these changes are introduced in July 2011 will be protected by transitional arrangements for a further two years. These migrants will not be subject to the new requirements under probationary citizenship.

Unlike indefinite leave to remain, it is understood that 'probationary citizenship' will be time limited and will therefore expire. During this time, a migrant must undertake active citizenship to obtain British citizenship or choose to become a permanent resident only. If a migrant chooses to become a permanent resident, the minimum period of probationary citizenship will be three years, with a maximum of five years.

It is also understood that probationary citizenship will not attract the benefits that indefinite leave to remain currently does. For example, migrants will not be eligible for public funds until they have obtained British citizenship and, if probationary citizenship was granted on the basis of an employment category, the migrant must have been in continuous employment since that grant.

As the rules now stand, when migrants apply for British citizenship they must demonstrate that they have not been out of the UK for more than 450 days in the five-year qualifying period and no more than 90 days in the 12 months prior to the date of application. The 450 days can be spread across the five years. The 2009 Act proposes that once the changes take effect, the number of days that an applicant can be out of the UK in each qualifying year of the five-year period must not exceed 90.

In addition, migrants can currently apply for British citizenship on the basis of five years' residence in the UK in any immigration category, provided that they have held indefinite leave to remain for the 12 months preceding the date of application. The 2009 Act stipulates that migrants must have a 'qualifying immigration status' throughout the five-year qualifying period to be eligible. A person has a qualifying immigration status if they have:

- 1) qualifying temporary residence leave;
- 2) probationary citizenship leave;

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| 3) permanent residence leave; | temporary residence leave' is in its guidance. |
| 4) Commonwealth right of abode; and | The British government has introduced these changes to ensure migrants 'earn' the right to be British. When announcing these changes, Minister of State for Borders and Immigration, Phil Woolas stated: |
| 5) a temporary or permanent European Economic Area (EEA) entitlement. | |

We can assume that the UK Border Agency will define exactly what a 'qualifying

'Being British is a privilege. These proposals break the link between

coming to work here temporarily and being given the right to citizenship.'

COMMENT

Until secondary UK Border Agency guidance is issued, we cannot be certain that the government's plan to have a more robust path to citizenship will not negatively affect migrants who have contributed to the UK socially and economically as a result of these changes. We urge all migrants who are eligible to apply for British citizenship before July 2011 to do so, to ensure that they will not be caught by the tough new rules.

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