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Changes to British citizenship following the Borders,  
Citizenship and Immigration Act 2009

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## Changes to British citizenship following the Borders, Citizenship and Immigration Act 2009



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THE BORDERS, CITIZENSHIP AND IMMIGRATION Act (BCIA) 2009 received Royal Assent last year. BCIA 2009 makes changes to border functions and several miscellaneous immigration matters. However, the most significant change it introduces affects how foreign nationals may acquire British citizenship in the UK. This article seeks to highlight these changes in some detail.

### INTRODUCTION

An article on the proposed changes to our current British citizenship and nationality laws would not be complete without considering the broader context in which BCIA 2009 was passed. In 2005 the government proposed sweeping changes to the UK's immigration system. This began with the introduction of the Points-Based System (PBS) in 2008, radically changing the ways in which migrants are able to enter and work in the UK, the idea being that only those deemed fit to contribute to the UK should be allowed to enter.

Parallel to this new system for economic migration, the government made a myriad of other changes aimed at policing the new system and strengthening UK borders. Changes over the past two years include:

- bringing together the Border and Immigration Agency, UKvisas and HM Revenue & Customs in a unified UK Border Agency (UKBA), creating a single border force and police-like powers for frontline staff;
- introducing a biometric data requirement for those applying for a UK visa;
- counting foreign nationals in and out of the country;
- expanding the UK's detention capacity, implementing powers to automatically deport serious offenders;
- introducing compulsory identity cards for foreign nationals who wish to remain in the UK; and
- introducing large on-the-spot fines for employers who do not make the right checks.

As part of the government's programme for reform, it came as no surprise that it would consider reforming the path to British citizenship.

### CASE FOR CHANGE

The government set out its proposals for change in the Green Paper 'The Path to Citizenship: Next Steps in Reforming the Immigration System'. The Paper highlights the reasons for the changes and it is clear that there is an underlying agenda for social, as well as immigration, reform.

The central principle is that, alongside strengthening the rights of citizenship, citizenship must be earned. Anyone who wishes to remain in the UK in the long term must be willing to 'speak our language, obey the law and contribute to the community'.

### CURRENT LEGISLATION

At present, migrants are entitled to apply for indefinite leave-to-remain (ILR) once they have completed a period of five years in the UK in a category leading to settlement (or two years if applying on the basis of a marriage or partnership to a British national, or someone with ILR).

To naturalise as a British citizen, migrants must have spent a minimum of five continuous years in the UK (three in the case of spouses or civil partners) and have held ILR for a minimum of one of those years. Migrants must also satisfy the current residency requirements, which require applicants to not have spent more than 450 days (270 days for spouses or civil partners) outside the UK in the five years preceding the application and not more than 90 days in the 12 months preceding the application.

### NEW REGIME

#### Qualifying and contributions

From July 2011, migrants will need to take the following steps to qualify for British citizenship:

- temporary residence for five years;
- probationary citizenship (for one to five years); and
- permanent residence or British citizenship.

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Migrants will also need to demonstrate a far more significant contribution to the UK before being able to obtain British citizenship. The requirements for progression will include:

- 1) English language skills;
- 2) paying tax and becoming self-sufficient;
- 3) obeying the law; and
- 4) joining in with the British way of life by demonstrating active citizenship. (See the box below for the notion of active citizenship.)

Until secondary legislation is passed and the UKBA publishes further guidance, it is not clear how the government plans to implement the scheme. Accordingly, all migrants who become eligible to apply for British citizenship are advised to do so before the new regime is rolled out in July 2011.

**Three routes**

Under the new regime there will be three key routes to citizenship (although, in practice, several other immigration categories will also continue to qualify):

- 1) economic/work route – for highly skilled and skilled workers who are in the UK under Tiers 1 and 2 of the PBS;

***‘All migrants who are eligible to apply for British citizenship are advised to do so before July 2011.’***

- 2) family – for family members of existing British citizens and permanent residents; and
- 3) protection – for refugees and migrants who have been given humanitarian protection.

Regardless of which category a migrant falls into, they must pass through the same three stages to obtain British citizenship, specifically: temporary residence, probationary citizenship and, finally, British citizenship or permanent residence.

**Other categories**

While the government sets out the three key routes to citizenship, it is important to note that several other routes to citizenship will continue to exist. Those who are discharged from HM Forces with four years of completed service, victims of domestic violence who were admitted as a partner of a British citizen or permanent resident, and bereaved partners who were admitted as a partner of a British citizen or permanent resident and whose sponsor has died during the two-year probationary period will all

be able to progress directly to permanent residence without passing through a stage of probationary citizenship. In addition, European Economic Area nationals with permanent residence, nationals with a qualifying Common Travel Area (CTA) entitlement, those with Commonwealth right of abode and those with UK ancestry will all be able to qualify for British citizenship.

**STAGE 1: TEMPORARY RESIDENCE**

Once a migrant has obtained valid leave to enter and remain in the UK in a category leading to settlement, they will automatically be deemed as temporary residents. For migrants to progress onto the second stage (probationary citizenship), they must demonstrate that they:

- obey the law;
- pass an English language skills test and knowledge of life in the UK assessment;
- meet the residency requirements (spend five years in the UK under the work or the protection route, two years under the family route), without more than 90 days a year absence in a single year (this differs from the current residency requirements for British citizenship applicants, since under current rules the 450 days absence can be spread across the five-year period randomly);
- contribute to the economy (ie through demonstrating that they have paid taxes); and
- meet the ongoing requirements, specific to their route.

With respect to the work route, migrants will have to show that they have been in ‘continuous employment’ since the grant of their previous leave. Under the family route migrants would have to show that they can support themselves or be supported

**ACTIVE CITIZENSHIP**

Migrants at the probationary citizenship stage will only be eligible to qualify for British citizenship after one year (and permanent residence after three years) if they demonstrate an active contribution to society. Those migrants who do not take part in active citizenship will be required to wait a further three years to qualify for British citizenship and a further five years for permanent residency.

The notion of active citizenship is yet to be clarified in any detail and further guidance is expected from the Home Office. It is anticipated that migrants will need to complete 50 hours of voluntary service, which may include initiatives such as volunteer work within a recognised charity or community body, along with activities that will:

- advance education or health;
- advance social and community welfare;
- advance heritage, arts, culture or sport;
- benefit the natural environment;
- benefit children, young people, elderly people, disabled people or other vulnerable groups; and/or
- involve mentoring or befriending.

by their sponsor and that their relationship with their sponsor is still subsisting.

**STAGE 2: PROBATIONARY CITIZENSHIP**

Probationary citizenship is set to be the equivalent of the existing ILR route. A key difference, however, is that unlike ILR it will not entitle migrants to the same benefits that ILR currently offers (such as drawing on public funds and having access to benefits) until migrants become either British citizens or permanent residents.

To progress to the final stage, migrants will have to spend between one and five years as a probationary citizen. (After this point migrants would be expected to move to the third stage or leave the UK.) The length of time a migrant spends in this category will depend on whether they wish to:

- a) apply for British citizenship or permanent residence; and
- b) whether they wish to participate in active citizenship.

The government's intentions where social cohesion and integration are concerned can be found at the crux of this new concept of active sponsorship, the idea being that those who actively contribute to society should be able to attain citizenship faster than those who do not. Thus, a person who completes the maximum required period of activities could potentially apply for citizenship after one year or wait three years should they not be inclined to do so.

Migrants who wish to become permanent residents, either by desire or because they are unable to become British citizens due to dual nationality restrictions, must spend a minimum of three years as a probationary citizen to qualify. Migrants who have obtained permanent residency may remain in the UK indefinitely and will be able to switch into the British citizenship category should they wish to do so.

Before progressing to the final stage, probationary citizens will also need to demonstrate that they have:

- obeyed the law during their probationary citizenship (migrants who receive custodial sentences will be stopped from progressing on the path to citizenship

and those convicted of minor offences must wait until their conviction is spent);

- met the residency requirements;
- continued to be self-sufficient, with no access to benefits;
- continued to meet the additional requirements specific to their route; and
- satisfied the notion of active citizenship if this is claimed.

While the decision to create a probationary citizenship stage may be a good way to ensure integration in and contribution to the UK, it may also arguably be seen as discouraging, rather than encouraging, integration (the label 'probationary citizen' infers second-class citizenship).

**STAGE 3: BRITISH CITIZENSHIP OR PERMANENT RESIDENCE**

Migrants who become British citizens or permanent residents will have full entitlement to the rights and benefits currently enjoyed by individuals in these categories.

The government recognised that some migrants may be unable to apply for British citizenship due to restrictions on dual nationality. The permanent residence category has been created to give these nationals the freedom to retain another citizenship, and enjoy the benefits and rights that British citizenship offers (and which they will have earned) without relinquishing their original citizenship. However, to qualify for permanent residence, migrants will have to spend a longer period (minimum three years) at the probationary citizenship stage. The government's view is that:

'It is right that those who feel that they cannot become British but instead choose to become permanent residents should have to complete a longer period as a probationary citizen.'

**TRANSITIONAL ARRANGEMENTS**

There will be a transitional period for migrants who already have ILR when the new regime is introduced. Such individuals will automatically be permanent residents and they will not need to pay or apply for this to occur. Furthermore, they will be eligible to apply for British citizenship under the current rules during the first two years after earned citizenship is introduced (ie until July 2013). Similarly, any migrant whose application for ILR has been submitted to the UKBA before July 2011 and is subsequently given ILR will be eligible to apply for citizenship under the current rules until July 2013.

**COMMENT**

Until secondary legislation and corresponding guidance from the UKBA is issued, it is uncertain whether the government's proposed path to citizenship will negatively affect migrants. The notion of active citizenship may not necessarily be welcome to all, and asking this of migrants who have already contributed to the UK socially and economically as a means to obtain citizenship at a faster rate may be difficult in practice. All migrants who become eligible to apply for British citizenship are therefore advised to do so before July 2011, to ensure that they will not be caught by the tough new rules.

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TIMESCALES FOR THE NEW REGIME			
Status required	Number of years in temporary residence	Number of years in probationary citizenship	Total number of years before status gained
British citizenship (BC)	Five	One to three years	Six to eight years
Permanent residence (PR)	Five	Three to five years	Eight to ten years
BC or PR status via the family route	Two	One to three years	Three to five years