



# ***Citizenship (Armed Forces) Bill***

**Bill No 13 of 2013-14**

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This briefing has been prepared for the Second Reading debate on the *Citizenship (Armed Forces) Bill* on 13 September 2013. The Bill, which was published on 3 September 2013, is sponsored by Jonathan Lord MP, who came third in the 2013-14 ballot for Private Members' Bills.

Melanie Gower

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## Research Paper 13/53

**Contributing Author:** Melanie Gower, Home Affairs Section

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## Summary

The *Citizenship (Armed Forces) Bill* is sponsored by Jonathan Lord MP, who came third in the 2013-14 ballot for Private Members' Bills. The Bill had its First Reading on 19 June. It was published on 3 September 2013. It is due to have its Second Reading debate on 13 September.

The Bill, which has Government support, consists of two clauses. It seeks to amend the requirements for naturalisation as a British citizen set out in the *British Nationality Act 1981*, in order to ensure that foreign and commonwealth members and former members of HM Armed Forces can apply for naturalisation on equal terms, irrespective of whether they were posted in the UK or overseas.

## 1 Introduction

The *Citizenship (Armed Forces) Bill* is sponsored by Jonathan Lord MP, who came third in the 2013-14 ballot for Private Members' Bills. The Bill had its First Reading on 19 June. It was published on 3 September 2013. It is due to have its Second Reading debate on 13 September.

The Bill, which has Government support, consists of two clauses. It seeks to amend the requirements for naturalisation as a British citizen set out in the *British Nationality Act 1981*, and to make consequential amendments to the *Borders, Citizenship and Immigration Act 2009*.

The Bill would extend to England and Wales, Scotland, Northern Ireland, the Channel Islands, the Isle of Man and the British overseas territories.

Background information about the Bill, including [Explanatory Notes](#) prepared by the Home Office, is available from the Bill's page on the Parliament website.

## 2 Naturalisation as a British citizen: the current requirements

Naturalisation is the process by which non-British adults can acquire British citizenship.

The statutory requirements for naturalisation are set out in section 6 and Schedule 1 of the *British Nationality Act 1981* ("the BNA 1981") as amended. The BNA 1981 came into force on 1 January 1983. The requirements relate to:

- age and capacity
- residence (or Crown service)
- character
- knowledge of language and life in the UK
- future intention

The residence requirements are specified in Schedule 1 of the BNA 1981. Put briefly,

- Applicants applying under section 6(1) of the BNA 1981 must satisfy either a collection of residence requirements (specified in paragraph 1(2) of Schedule 1) or a Crown service requirement (as specified in paragraph 1(3) of Schedule 1).
- Applicants who are married to a British citizen can apply for naturalisation under section 6(2) of the BNA 1981. They must satisfy slightly different residence requirements (which are unaffected by the *Citizenship (Armed Forces) Bill*).

### 2.1 The residence requirements and the Crown service exemption

Paragraph 1(2) of Schedule 1 of the BNA 1981 specifies the residence requirements for naturalisation as a British citizen under section 6(1) of the Act. Paragraph 1(2)(a) requires "that the applicant was in the United Kingdom at the beginning of the period of five years ending with the date of the application." Paragraph 1(2) also specifies the number of days of absences from the UK that the applicant is allowed to have during the five year qualifying period and what immigration time restrictions they should have been under.

The BNA 1981 gives the Secretary of State power to waive some of the residence requirements if “in the special circumstances” of any case she “thinks fit”.<sup>1</sup> Such discretion is applied in applications involving foreign and commonwealth members of the Armed Forces.<sup>2</sup> For example, time spent serving in the UK or overseas can count towards the qualifying residence period.

However, the BNA 1981 does not give scope to waive the requirement to be physically present in the UK on the first day of the qualifying period ending with the date of the application. As a result, foreign and commonwealth members of HM Armed Forces who are posted overseas may have to wait longer before they can apply to naturalise as a British citizen than persons in the UK.

Paragraph 1(3) of Schedule 1 of the BNA 1981 provides an exception to the residence requirements set out in paragraph 1(2) for persons who are serving outside the UK in “Crown service” on the date of their application.<sup>3</sup> This applies mainly to members of HM Armed Forces and the diplomatic service serving abroad. All that the BNA 1981 requires in these cases is that, on the date of the application, the applicant is outside the UK in Crown service for the UK government. There is no minimum period of service specified, or a requirement to have been present in the UK at any particular time.

However, persons who are not overseas or still in service at the time of applying for naturalisation cannot benefit from the paragraph 1(3) exemption.

Furthermore, the section 1(3) provisions are applied sparingly. Home Office policy guidance specifies various criteria which should be considered when assessing naturalisation applications based on Crown service overseas, including “quality of service”, “connections with the UK”, “rank or grade”, “loyalty” and “length of service”.<sup>4</sup> The guidance states that “quality of service” is of paramount importance; applications that do not satisfy this criterion are unlikely to be granted, even if they meet the other criteria and satisfy the statutory requirements. “Quality of service” generally requires the applicant “to be the holder of a responsible post; and to have performed their duties to an exceptionally high standard.”

## 2.2 Amendment made by the *Borders, Citizenship and Immigration Act 2009*

Section 39(9) of the *Borders, Citizenship and Immigration Act 2009* (“the BCIA 2009”) amended Schedule 1 of the BNA 1981, in order to provide the Secretary of State discretion to waive any or all of the residence requirements specified in paragraph 1(2) of the BNA 1981 “in the special circumstances of a particular case that is an armed forces case or an exceptional Crown service case”. “Armed forces” cases were defined as one where the applicant is or has been a member of the Armed Forces on the date of application. “Exceptional Crown service” cases were defined as those where the applicant is in Crown service overseas on the date of application, and the Secretary of State considers their performance to be exceptional.

Further changes to Schedule 1 were made by other sub-sections of section 39. These were necessary in order to amend the requirements for naturalisation, in line with the then Labour Government’s proposed ‘earned citizenship’ policy.

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<sup>1</sup> *British Nationality Act 1981*, Schedule 1 paragraphs 2 and 4

<sup>2</sup> Home Office *Nationality Instructions Volume 1, chapter 18* Annex B(i) ‘Applications for naturalisation as British citizens made by members/ex-members of the British armed forces’ [accessed on 10 September 2013]

<sup>3</sup> “Crown service” refers to persons who are in an established permanent position, rendering services to the Crown and paid from funds directly voted by Parliament.

<sup>4</sup> Home Office *Nationality Instructions, Volume 1, chapter 18* Annex C, ‘The Crown Service requirement - section 6(1) applications’ [accessed on 10 September 2013]

However, section 39 has not been commenced. The Government confirmed in November 2010 that it did not intend to proceed with Labour's earned citizenship policy.<sup>5</sup>

### 2.3 Commitment made in the Armed Forces Covenant

The impact of immigration and nationality laws on non-British members of the Armed Forces Community was one of the issues highlighted in the Armed Forces Covenant, which was published by the Ministry of Defence in May 2011.<sup>6</sup> In particular, the Covenant stated that these personnel should be able to access routes to British citizenship as easily as other persons, and that this should not be affected by service overseas.<sup>7</sup>

A booklet published alongside the Covenant highlighted some specific areas of immigration and nationality law that the UK Border Agency (as then was) and Ministry of Defence were considering in order to ensure that foreign and commonwealth service personnel and their families did not suffer disadvantage compared to their civilian counterparts.<sup>8</sup> One of the 'future actions' identified in the booklet was that:

New legislation will be brought forward to enable Foreign and Commonwealth Service personnel to be exempted from the requirement to be in the UK at the start of the residential period for naturalisation as a British citizen, if in service on that date.<sup>9</sup>

This action had not been completed by the time of the publication of the *Armed Forces Covenant Annual Report for 2012* in November 2012.<sup>10</sup>

## 3 The Bill

The Bill seeks to implement the commitment made in the Armed Forces Covenant.

**Clause 1** seeks to amend Schedule 1 of the *British Nationality Act 1981*, in order to give the Secretary of State discretion to waive the requirement currently specified in paragraph 1(2)(a) of the Act that applicants for naturalisation under section 6(1) must have been in the UK on the date five years before their application. This discretion would only apply in cases where the applicant is or has been a member of the Armed Forces.

It also makes consequential amendments to section 39 of the *Borders, Citizenship and Immigration Act 2009* so that if it was brought into force it would be consistent with the amended wording of Schedule 1.

**Clause 2** specifies the Bill's territorial extent and commencement provisions. The Bill covers England and Wales, Scotland, Northern Ireland, the Channel Islands, the Isle of Man and the British Overseas Territories. It would come into force two months after receiving Royal Assent.

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<sup>5</sup> UKBA update, 'Government announcement on settlement reforms', 5 November 2010

<sup>6</sup> The Covenant is discussed in Library Standard Note SN06519 *The Armed Forces Covenant*.

<sup>7</sup> Ministry of Defence, *The Armed Forces Covenant*, May 2011, p.9

<sup>8</sup> Ministry of Defence, *The Armed Forces Covenant: Today and Tomorrow*, May 2011, pp.61-63

<sup>9</sup> Ministry of Defence, *The Armed Forces Covenant: Today and Tomorrow*, May 2011, p.62

<sup>10</sup> Ministry of Defence, *The Armed Forces Covenant Annual Report 2012*, November 2012, p.66