

THE FULL CAPACITY REQUIREMENT

1. Introduction

1.1 This Annex provides guidance on the requirement for certain purposes of British nationality law, including naturalisation, that applicants should be "of full capacity".

1.2 Full capacity is defined in **s.50(11)** of the British Nationality Act 1981 as being "not of unsound mind". It is not further defined in the Act, but the requirement can be regarded as having been satisfied if the standard set out below is met.

2. Standard

2.1 All we expect from applicants is that they should be able to grasp, however dimly, the purpose of their application. We should not expect a total understanding of nationality or citizenship, or a grasp of the procedures or of the statutory provisions. Nor should we necessarily expect a continuing and sustained level of comprehension. But applicants should be of sufficiently sound mind to know before applying that they want to acquire or, as the case may be, renounce British nationality (even if they need advice or assistance from others in making this decision). Before granting an application we should have no reason to doubt that that level of understanding is present or capable of being restored.

2.2 The full capacity requirement is not intended to deny British nationality to, or prevent renunciation of British nationality by, people whose mental disability makes it difficult for them to communicate. This requirement is concerned only with a lack of comprehension resulting from such a disability, and we must be careful to make this distinction.

3. Waiver of the requirement to be of full capacity

3.1 Under **s.44A** of the British Nationality Act 1981, as inserted by **s.49** of the **Immigration, Asylum and Nationality Act 2006**, the Secretary of State has discretion to waive the requirement

to be of full capacity "if he thinks it is in the applicant's best interests [to do so]".

3.2 Governors and Lieutenant-Governors may exercise this discretion on behalf of the Secretary of State in cases for which they have delegated responsibility under **s.43** of the 1981 Act.

3.3 **Section 49** of the **2006 Act** entered into force on 31 August 2006, and discretion to waive the full capacity requirement may be exercised in any application decided after that date.

4. Consideration of applications

4.1 Most applicants find no difficulty in meeting the full capacity requirement. We should, therefore, assume that applicants meet the requirement unless there is information to cast doubt on this (e.g. a report from a referee or doctor, or from an address suggesting that an applicant is an in-patient in an establishment for the mentally handicapped). In such a case, referee enquiries may be appropriate to establish the position, or a letter to the applicant's agent or guardian or to the applicants themselves. (Where applicants have lodged their own applications, the presumption must be that they meet the full capacity requirement unless there is substantial evidence to the contrary).

4.2 If it appears that the applicant may have a mental illness or handicap, or is receiving in-patient or out-patient treatment in any establishment for the mentally ill or handicapped, this is not in itself sufficient grounds for refusing the application. Where there is information which could cast doubt on whether the requirement has been met, we should give applicants (or their guardian/agent) the option of submitting, at their cost, a report from their doctors or from a person professionally responsible for their care or welfare. We should explain both the full capacity requirement and our interpretation of it (by sending a copy of the Notes attached to this Annex), and invite as much information as possible to help us reach a decision on the application.

4.3 In rare cases, there may be conflicting professional opinions about an applicant's mental capacity. In such cases, it would normally be right to give the applicant the benefit of the doubt.

4.4 In cases where the applicant **cannot** be considered of full capacity we should consider whether it would be in his or her best interests to waive the requirement. It will normally be appropriate to take account of:

- the views of the applicant, to the extent that s/he is able to express them;
- the views of any person, professional or otherwise, who has assumed responsibility for the applicant's welfare; and
- the citizenship status of other family members, especially those with whom the applicant resides or is in regular contact

4.5 The decision whether or not to waive the full capacity requirement should be taken by a Senior Caseworker.

5. Oath and pledge

Applications made before 1 January 2004

5.1 Where a successful applicant is required to take an oath of allegiance, the person administering the oath is likely to want to be satisfied that the applicant understands the significance of what is happening. If the person administering the oath is not so satisfied, we cannot intervene, but we should be ready to give an explanation of the full capacity requirement if asked to do so by sending a copy of the Notes attached to this Annex. If an applicant who is required to take the oath of allegiance is unable to find anyone willing to administer the oath, we cannot issue a certificate of naturalisation.

Applications made on or after 1 January 2004

5.2 For all successful adult applicants for British nationality received on or after 1 January 2004, the oath and pledge will normally be administered at a citizenship ceremony. The person administering the oath and pledge (in most instances a Superintendent Registrar or their Deputy) is likely to want to be satisfied that the applicant understands the significance of what is happening. If the person administering the oath and pledge is not so satisfied, we cannot intervene, but we should be ready to give an explanation of the full capacity

requirement if asked to do so. In the event that the individual administering the oath and pledge has such a concern, their first point of contact for advice will be the Citizenship Ceremonies Support Team (CCST). Guidance to Registrars on citizenship ceremonies, which will include direct contact details for the CCST, will advise that if any concerns cannot be satisfied prior to the ceremony taking place, it should be postponed until the matter is resolved.

- 5.3 Where the requirement to be "of full capacity" has already been waived, it will be usual also to waive the requirements (a) to make the oath and pledge and (b) to do so at a citizenship ceremony. However, we should invite the views of those mentioned in paragraph 4.4 on this point. Where there is a desire for the applicant to attend a citizenship ceremony, perhaps as part of a family group of applicants, it should be possible to accommodate this. Such requests will, in most instances, be dealt with by the Citizenship Ceremonies Support Team following discussion with the relevant local authority.

6. **Conclusion**

- 6.1 These guidelines are not intended to be rigid, and each application should be considered individually and sympathetically on its merits. In cases where it is proposed to act outside these guidelines, the papers should be noted in NPSCU Policy Section.

EXPLANATORY NOTES

FULL CAPACITY - THE STANDARD REQUIRED

1. All applicants for naturalisation and for renunciation and subsequent resumption of citizenship under the British Nationality Act 1981 must be of full capacity. At s.50(11) of the Act, full capacity is defined as being "not of unsound mind". There is no further definition, but the following paragraphs indicate how this requirement is currently administered.
2. The fact that a person suffers from a mental illness or handicap, or is receiving in-patient or out-patient treatment in any establishment for the mentally ill or handicapped, is not in itself a reason for refusing an application. Nor is the full capacity requirement intended to be a bar to citizenship, or to renunciation of citizenship, for people whose mental illness or handicap makes it difficult for them to communicate. This requirement is concerned only with lack of comprehension resulting from such an illness or handicap. Applicants may be regarded as being of full capacity if they have some understanding, however dim, of the purpose of their application.
3. A very simple level of understanding is all that is required; not a comprehensive knowledge of nationality or citizenship nor any grasp of the procedures and statutory provisions.
4. A continuing and sustained level of comprehension is not expected. However, at the time of application, an applicant should have some understanding that he or she wants to acquire or, as the case may be, give up British nationality, albeit with advice and assistance from others, and this level of understanding must also exist when an application is granted.
5. From 31 August 2006, the Secretary of State may waive the requirement to be of full capacity if he thinks it would be in the applicant's best interests to do so.