

Applications for naturalisation as British citizens made by members/ex-members of the British Armed Forces

1. General

1.1 All applicants **must** satisfy:

- the requirement to be free of immigration time restrictions on the date the application is made;
- the unwaivable requirement to have been physically present in the UK on the first day of the qualifying period (NB. If an applicant fails to meet this requirement we can apply the usual discretion with regard to re-declaration);
- the good character requirement (see Annex D);
- the language and 'life in the United Kingdom' requirements (see Annex E);
- the future intentions requirement (see Annex F);

AND

- the criteria described in paragraphs 2 or 3 below (depending on whether or not they are currently serving in the Brigade of Gurkhas).

2. CURRENTLY SERVING MEMBERS OF THE BRIGADE OF GURKHAS

2.1 If, at the time of consideration, the applicant is currently serving in the Brigade of Gurkhas, we should:

- a. calculate the number of days' technical absence in the qualifying period and exclude this from the residence count;
- b. combine technical absences with actual absences to obtain the total number of days' absence during the qualifying period;
- c. apply the normal levels of permitted absence (i.e. 450/270/90 days) and **not** waive any excess absence

2.2 Most applications from serving members of the Brigade of Gurkhas will therefore fall for refusal, as they will have excess absences. In such cases, the applicant should be advised their application has been refused along the lines of the draft letter in Annex B(ii).

2.3 Applications which, in spite of our unwillingness to exercise discretion over excess absences, would otherwise be successful should be referred to NPT for further advice.

3. **FORMER ARMED FORCES PERSONNEL (INCLUDING *FORMER* GURKHAS) AND THOSE CURRENTLY SERVING OTHERWISE THAN IN THE BRIGADE OF GURKHAS**

3.1 Absences

3.1.1 In these cases, we should exercise discretion under **paragraph 2(b) of Schedule 1** to the BNA 1981 and treat any "technical" absences during the qualifying period as residence.

3.1.2 In addition, and subject to the applicant meeting the requirement to have been in the United Kingdom on the first day of the qualifying period, we should, if necessary, be prepared to disregard any and all actual absences from the UK that were due to the applicant's armed forces service.

3.2 Evidence of residence

3.2.1 While applicants were in military service it is unlikely that their passports will have been stamped. However, as we would overlook any service-related absences, it is not necessary to see service records confirming each absence. We would, however, need to see something from the MOD confirming duration of service in the armed forces, and also evidence of the applicant's presence in the UK at the beginning of the qualifying period. Any non-service-related absences can be confirmed by the applicant's passport.

3.2.2 For periods after discharge we should expect ex-servicemen to be able to produce normal evidence of residence (either a passport or alternative evidence of residence).

3.3 Immigration time restrictions

3.3.1 While in the armed services, applicants are exempt from immigration control and therefore free of immigration time restrictions. Applicants will have been free of immigration time restrictions throughout their period of service. In many cases, former armed services personnel will have been granted ILR on discharge and will meet the requirement to have been free of immigration time restrictions in the 12 months prior to the date of application. However, this should not be assumed and we should check that applicants meet this requirement. NB. Until 25 October 2006, certain transitional provisions were in place for ex-Gurkhas (see paragraph 5 below).

3.3.2 Where an ex-member of the armed forces has not been granted ILR/ILE, we should refuse the application and advise the applicant to obtain ILR/ILE prior to submitting a further application for citizenship. Refusal would be on the grounds of either:

- breach of immigration laws, if the applicant is here unlawfully (but see also paragraph 5 below); or
- not being free of immigration time restrictions, if the person is on a work permit or has limited leave to remain

3.4 Refusals

3.4.1 No applications from current or former armed forces personnel, other than currently-serving members of the Brigade of Gurkhas, should be refused without first referring to chief caseworker level, who will determine if the case needs to be referred to Ministers.

4. Spouses/civil partners and children

4.1 Spouses/civil partners and children of servicemen are not exempt from immigration control while residing in the UK. Instead, they are generally given leave to remain as long as their spouse/civil partner is in service. While they still have limited leave to remain, neither spouses/civil partners nor children will be able to meet the criteria to be free of immigration time restrictions (spouse/civil partner) or future intentions (children), and their applications should be refused.

4.2 However, once settled, they will be able to apply for naturalisation/registration. They, too, may have high levels of absences either because they have been accompanying their spouse/civil partner while overseas or because they have not been able to accompany him while he is in the UK. If, in line with the policy in paragraph 3, we have been (or would be) prepared to disregard absences occasioned by an applicant's armed forces service, we should be prepared to do likewise in respect of his or her spouse's or civil partner's absences.

4.3 Any child born legitimately in the UK to a parent who is in HM armed forces is automatically a British citizen (where the mother is a BC or settled the child will be a BC irrespective of legitimacy). Where a child is not already a British citizen, we should consider the application in line with

the parents and be prepared to waive the criterion for children over 13 years of age to have completed two years' residence in the UK.

5. **Transitional arrangements**

- 5.1 As regards the position of ex-Gurkhas living in the UK without the appropriate immigration status, immigration caseworkers were prepared, for a transitional period of 2 years ending on 25 October 2006, to waive any period of breach, or illegal residence when considering granting ILR/ILE.
- 5.2 To be consistent with this policy, we should also disregard any periods of breach/illegal residence in the UK between discharge and the granting of ILR/ILE when considering applications from ex-Gurkhas. It should be noted that this practice only applied for a transitional period of 2 years - until 25 October 2006. **NB. This will only apply to applications from ex-Gurkhas and no other category of serviceman/ex-serviceman.**