

PART I: BRITISH CITIZENSHIP

CHAPTER 18: NATURALISATION AT DISCRETION

SECTION 6 BRITISH NATIONALITY ACT 1981

18.1 Introduction

- 18.1.1 Naturalisation is the principal means by which adults may acquire British citizenship under the British Nationality Act 1981.
- 18.1.2 Under previous legislation, only aliens and British protected persons could be naturalised. Under the British Nationality Act 1981, any person of full age and capacity, who is not already a British citizen, may be naturalised as a British citizen regardless of existing nationality or citizenship.
- 18.1.3 Naturalisation is at the discretion of the Home Secretary. Under **s.6** of the British Nationality Act 1981, he may grant a certificate of naturalisation to a person of full age and capacity if he is satisfied that person meets the requirements set out in **Schedule 1** to the Act. He can refuse to grant a certificate to a person who meets these requirements, but he cannot grant a certificate to a person who does not meet them.
- 18.1.4 The naturalisation application Form (AN) requires an applicant to be supported by two referees. One referee must be a person of professional standing and the other must be the holder of a British citizen passport and either a professional person or over the age of 25. These references will not automatically be taken up (see **Chapter 6** paragraph 6.3).
- 18.1.5 Under **s.44(1)**, the Home Secretary is required to exercise his discretion without regard to the race, colour or religion of the applicant for naturalisation.
- 18.1.6 Under **s.44(2)**, the Home Secretary was not required to give a reason for granting or refusing naturalisation, and his decision was not subject to appeal in or review by the courts. However, **s.44(2)** was repealed on 7 November 2002 by the **Nationality, Immigration and Asylum Act 2002** and we are now required to give reason(s) for refusal in all cases.
- 18.1.7 In considering the exercise of discretion it is important to look at the case as a whole. We need to be sure, before we

agree to waive a requirement, that applicants are of good character and have genuinely thrown in their lot with this country. The points which need to be considered are set out in the Annexes to this Chapter.

18.2 The Law

18.2.1 Naturalisation under section 6(1)

18.2.1.1 A person may be granted a certificate of naturalisation as a British citizen under **s.6(1)** of the British Nationality Act 1981 if:

- on the date of application, the applicant:
 - a. is of full age (i.e. aged 18 or more); and
 - b. is of full capacity (see Annex A); and
either
 - c. meets the residence requirements set out in 18.2.1.2 below; or
 - d. is serving outside the UK in Crown Service under the government of the UK (see Annex C); and
- at the time of consideration
 - a. is of good character (see Annex D); and
 - b. has a sufficient knowledge of the English, Welsh or Scottish Gaelic language, and can provide the appropriate evidence to support this (see Annex E); and
 - c. (if the application is made on or after 1 November 2005) has a sufficient knowledge of life in the United Kingdom, and can provide the appropriate evidence to support this (see Annex E Section 1); and
 - d. remains of full capacity (see Annex A); and
 - e. intends, if a certificate of naturalisation as a British citizen is granted:

i. to have his/her home or (if more than one) the principal home in the UK; or

ii. to enter into, or continue in either:

- Crown Service under the government of the UK; or
- service under an international organisation of which the UK or Her Majesty's Government therein is a member; or
- service in the employment of a company or association established in the UK (see Annex F)

18.2.1.2 The residence requirements referred to in 18.2.1.1 above are that the applicant was:

- a. in the UK at the beginning of the period of 5 years ending with the date of the application; and
- b. not absent from the UK for more than 450 days in that 5 year period; and
- c. not absent from the UK for more than 90 days in the period of 12 months ending with the date of the application; and
- d. not, on the date of the application, subject under the immigration laws to any restriction on the period of stay in the UK; and
- e. not, at any other time in the 12 month period ending with the date of the application, subject under the immigration laws to any restriction on the period of stay in the UK; and
- f. not, at any time in the period of 5 years ending with the date of the application, in the United Kingdom in breach of the

immigration laws.

18.2.1.3 There is discretion:

- to waive the language requirement. This is explained in Annex E.
- to waive the knowledge of life in the United Kingdom requirement. This is explained in Annex E, Section 1.
- to waive some of the residence requirements (b, c, e and f in 18.2.1.2 above). This is explained in Annex B (and Annex B(i) in the case of current and former members of HM Armed Forces).

18.2.2 Naturalisation under section 6(2)

18.2.2.1 A person may be granted a certificate of naturalisation as a British citizen under **s.6(2)** of the British Nationality Act 1981 if, on the date of application, the applicant:

- is of full age (i.e. aged 18 or more); and
- is of full capacity (see Annex A); and
- is married to/in a civil partnership with a British citizen (see Annex F to **Chapter 6** and the entries "**MARRIAGE**" and "**CIVIL PARTNERSHIP**" in Volume 2); and
- meets the residence requirements set out in 18.2.2.2 below; and, at the time of consideration:
 - a. is of good character (see Annex D); and
 - b. remains of full capacity (see Annex A); and
 - c. (if the application is made on or after 28 July 2004) has a sufficient knowledge of the English, Welsh or Scottish Gaelic language, and can provide the appropriate evidence to

support this (see Annex E); and

- d. (if the application is made on or after 1 November 2005) has a sufficient knowledge of life in the United Kingdom, and can provide the appropriate evidence to support this (see Annex E Section 1).

18.2.2.2 The residence requirements referred to in 18.2.2.1 above are that the applicant:

- a. was in the UK at the beginning of the period of 3 years ending with the date of the application; and
- b. was not absent from the UK for more than 270 days in that 3 year period; and
- c. was not absent from the UK for more than 90 days in the period of 12 months ending with the date of the application; and
- d. was not, on the date of the application, subject under the immigration laws to any restriction on the period of stay in the UK; and
- e. was not, at any time in the period of 3 years ending with the date of the application, in the UK in breach of the immigration laws.

18.2.2.3 There is discretion:

- to waive some of the residence requirements (a, b, c. and e. in 18.2.2.2 above). This is explained in Annex B
- to waive the language requirement (if applicable). This is explained in Annex E
- to waive the knowledge of life in the United Kingdom requirement (if applicable). This is explained in Annex E Section 1

18.2.3 Requirements common to sections 6(1) and 6(2)

18.2.3.1 An applicant for naturalisation under either **s.6(1)** or **s.6(2)** of the British Nationality Act 1981 is regarded as being absent from the UK when in the UK and:

- entitled to an exemption from immigration control under **s.8(3)** (diplomats) or **(4)** (members of home, Commonwealth or visiting forces) of the **Immigration Act 1971**, as amended by **s.4** of the **Immigration Act 1988**; or
- a member of the family and is part of the household of a person entitled to such an exemption; or
- detained as a result of a sentence passed by a court, in the UK or elsewhere, for any offence; or
- detained in hospital under a hospital order made in connection with a conviction for an offence; or
- detained under any power of detention conferred by the UK immigration laws; or
- liable to be detained for any of the reasons at c, d and e above, but is unlawfully at large, or absent without leave, and for that reason is liable to be arrested

18.2.3.2 There is discretion to treat as residence in the UK a period which is regarded as absence from the UK for any of the reasons given in 18.2.3.1. This is explained in Annex B. **NB. Special considerations apply to members of the British Armed Forces who are, or were at any time during the relevant qualifying period, exempt under s.8(4)(a) of the 1971 Act (see Annex B(i)).**

18.2.4 Children included in applications

18.2.4.1 Minor children cannot be naturalised, but adults may include on their application form children

under 18 whom they wish to become British citizens. Such children may already be British citizens or can be registered as British citizens either because they have an entitlement or at the discretion of the Home Secretary.

18.2.5 Explanation of terms

18.2.5.1 An explanation of the following terms is given in Annex F to **Chapter 6**:

- "alien"
- "British protected person"
- "designated person"
- "United Kingdom"
- "qualifying territories"
- "Crown service"
- "Crown service under the government of the UK"
- "Crown service under the government of a qualifying territory"
- "immigration laws"
- "married"
- "civil partnership"

18.2.6 Status acquired

18.2.6.1 A person who is granted a certificate of naturalisation as a British citizen under **s.6(1)** or **s.6(2)** is a British citizen "otherwise than by descent". (See **Chapter 20**)

18.3 Application form

18.3.1 The application should normally be made on Form AN (but see **Chapter 6**: "What is an application?").

18.4 Evidence to be supplied

18.4.1 All applications

18.4.1.1 We should expect to see evidence of the applicant's identity (i.e. name(s) and place and date of birth).

18.4.1.2 All applications made on or after 28 July 2004 must include evidence that the applicant can meet the knowledge of language requirements. What is acceptable as evidence will vary depending on the specific date of application and where the application has been submitted. Details can be found at Annex E. If evidence has not been provided with the application, this should be requested in accordance with the procedure outlined in **Chapter 6.6**. NB. This paragraph does not apply to applications based on a knowledge of Welsh or Scottish Gaelic.

18.4.1.3 All applications received on or after 1 November 2005 must include evidence that the applicant can meet the knowledge of life in the UK requirement. The exact form this evidence will take will vary depending on where the application is submitted, see Annex E for details. If evidence has not been provided with the application, this should be requested in accordance with the procedure outlined in **Chapter 6.6**.

18.4.2 Applications under section 6(1)

18.4.2.1 We should also expect to be satisfied that the applicant meets:

- the residence requirements (see Annex B, and B(i) if the applicant is a current or former member of HM Armed Forces); or
- the Crown service requirement (see Annex C); and
- the good character requirement (see Annex D); and
- the future intentions requirement (see Annex F); and
- the language requirement (see Annex E); and
- the knowledge of life in the United Kingdom requirement (see Annex E, Section 1)

18.4.2.2 It may be assumed that the applicant is of full capacity unless there is evidence to the contrary (see Annex A).

18.4.3 Applications under section 6(2)

18.4.3.1 We should expect to be satisfied that the applicant meets:

- the marriage/civil partnership requirement (i.e. on the date of the application):

i. was married/in a civil partnership; and

ii. has a spouse/civil partner who was a British citizen; and

- the residence requirements (see Annex B); and
- the good character requirement (see Annex D); and
- the language requirement (see Annex E); and
- the knowledge of life in the United Kingdom requirement (see Annex E, Section 1)

18.4.3.2 As with applications under **s.6(1)**, the requirement to be of full capacity may be assumed unless there is evidence to the contrary.

18.4.4 Children included in applications

18.4.4.1 We should expect to see evidence:

- of the child's identity (i.e. name and place and date of birth); and
- of the child's relationship to the adult applicant; and
- as set out in the relevant Chapter of these instructions, depending on the section of the British Nationality Act 1981 under which registration is to be considered

18.4.5 Any evidence already on the file should be taken into account. If documents have been seen and noted in the past it is not always necessary to ask to see them again. If the applicant's marriage/civil partnership, or a parent and child relationship, has been accepted as valid by an Entry Clearance Officer, Immigration Officer, Home Office official, or any tribunal or court in the UK, there is no need to ask for further evidence unless there is cause to doubt the previously accepted position. It should be noted, however, that on occasions a subsisting relationship is accepted for immigration purposes, whereas for nationality purposes a valid marriage/civil partnership is needed.

18.4.6 To guard against the possibility of fraud, we should expect to see evidence of identity over and above that required to establish eligibility for naturalisation. It should be remembered, in particular, that a birth certificate is evidence not of identity, but of an event.

18.5 Checking the application

18.5.1 General principles

18.5.1.1 We should not grant a certificate of naturalisation to a person who is already a British citizen or who has an entitlement to British citizenship under another provision of the British Nationality Act 1981. We cannot grant a certificate of naturalisation to a person who does not meet the requirements explained in 18.2 above.

18.5.1.2 The guidance in 18.5.2 and 18.5.3 below should be followed to determine whether the applicant, or any child included in the application, is already a British citizen or has an entitlement to British citizenship.

18.5.2 Checking for automatic claims

18.5.2.1 There is always the possibility that an applicant for naturalisation and/or any child included in the application may already be a British citizen.

18.5.2.2 If there is nothing in the papers to suggest that the applicant and/or any child included in the application is already a British citizen, we need

not investigate this possibility. Equally, we need not ask for proof that they did not acquire British citizenship automatically before we consider the application.

18.5.2.3 If the applicant and/or any child included in the application has an automatic claim to British citizenship we should write to say so and explain that naturalisation and/or registration is not necessary and make the appropriate refund of fee (see **Chapter 6**).

18.5.3 Checking for entitlements

A. The applicant

18.5.3.1 If the applicant is not already a British citizen, an entitlement to be registered as a British citizen may exist:

- under **s.1(4)**, if born in the UK on or after 1 January 1983 (see **Chapter 8**)
- under **s.4**, if a British overseas territories citizen, a British National (Overseas), a British Overseas citizen, a British subject under the Act or a British protected person (see 18.5.3.3 below and **Chapter 12**)
- under **s.4B**, if a British Overseas citizen, a British subject under the Act or a British protected person (see **Chapter 12**)
- under **s.4C**, if born before 1983 to a CUKC mother (see **Chapter 7**)
- under **s.5**, if a British overseas territories citizen by connection with Gibraltar (see 18.5.3.3 below and **Chapter 13**)
- under **s.10**, if the applicant was a citizen of the United Kingdom and Colonies who renounced that status before 1 January 1983 (see **Chapter 16**)

- under **s.13**, if the applicant was a British citizen who renounced that status (see **Chapter 17**)
- under **paragraph 3** of **Schedule 2**, if born stateless in the UK or a British overseas territory on or after 1 January 1983 (see **Chapter 15**)
- under **paragraph 4** of **Schedule 2**, if born stateless outside the UK and the British overseas territories on or after 1 January 1983 (see **Chapter 15**)
- under **paragraph 5** of **Schedule 2**, if born stateless before 1 January 1983 (see **Chapter 15**)

18.5.3.2 If the applicant is entitled to registration as a British citizen, we should write and say so and explain, if appropriate, that a refund of the excess fee will be made.

18.5.3.3 NB. A person who was a British overseas territories citizen, immediately before 21 May 2002, by connection with a qualifying territory will have become a British citizen automatically on that date.

B. Children included in applications

18.5.3.4 If any child included in an application is not already a British citizen, an entitlement to be registered as a British citizen may exist:

- under **s.1(3)**, if born either in the UK on or after 1 January 1983 and before 21 May 2002 or in the UK or a qualifying territory on or after 21 May 2002 (see **Chapter 8**)
- under **s.1(4)**, if born in the UK on or after 1 January 1983 (see **Chapter 8**)
- under **s.3(2)**, if born either outside the UK on or after 1 January 1983 and before 21 May 2002 or outside the UK and the qualifying territories

on or after 21 May 2002 (see **Chapter 10**)

- under **s.3(5)**, if born either outside the UK on or after 1 January 1983 and before 21 May 2002 or outside the UK and the qualifying territories on or after 21 May 2002 (see **Chapter 11**)
- under **s.4**, if a British overseas territories citizen, a British National (Overseas), a British Overseas citizen, a British subject under the Act or a British protected person (see 18.5.3.5 below and **Chapter 12**)
- under **s.4B**, if a British Overseas citizen, a British subject under the Act or a British protected person (see **Chapter 12**)
- under **s.5**, if a British overseas territories citizen by connection with Gibraltar (see 18.5.3.5 below and **Chapter 13**)
- under **paragraph 3 of Schedule 2**, if born stateless in the UK or a British overseas territory on or after 1 January 1983 (see **Chapter 15**)
- under **paragraph 4 of Schedule 2**, if born stateless outside the UK and the British overseas territories on or after 1 January 1983 (see **Chapter 15**)

18.5.3.5 NB. A minor who was a British overseas territories citizen, immediately before 21 May 2002, by connection with a qualifying territory will have become a British citizen automatically on that date.

18.5.3.6 If any child included in an application is entitled to registration as a British citizen, the registration should be effected under the appropriate section, regardless of the decision on the application for naturalisation.

18.5.3.7 If there is an entitlement under **s.3(2)** or **s.5** (which give British citizenship "by descent"), the

guidance in the Chapters on the other sections mentioned in 18.5.3.4 above should be carefully studied to ensure that there is no possibility of an immediate or future entitlement under any of them which would give British citizenship "otherwise than by descent".

18.5.3.8 If there is no immediate entitlement under any provision and no future entitlement for which the family might wish to wait, we should consider whether the child(ren) can be registered at the Home Secretary's discretion under **s.3(1)** (see **Chapter 9**).

18.6 **Enquiries**

18.6.1 It may be necessary for us to make enquiries into some applications for naturalisation in order for us to be satisfied that the applicant meets the statutory requirements. These enquiries vary according to a number of factors related to the applicant's circumstances. The procedures to be followed in making enquiries into applications for naturalisation are set out in Annex H.

18.7 **Oath and pledge**

18.7.1 For guidance on whether an applicant is required to make an oath of allegiance and, if applicable, a pledge, see **Chapter 6**. Guidance on the applicant's capacity to take an oath of allegiance and the procedure to follow in cases of doubt is given in Annex A.