

PART II: BRITISH OVERSEAS TERRITORIES CITIZENSHIP

CHAPTER 34: NATURALISATION AT DISCRETION

SECTION 18 BRITISH NATIONALITY ACT 1981

34.1 Introduction

- 34.1.1 Naturalisation is the principal means by which adults may acquire British overseas territories citizenship under the British Nationality Act 1981. Any person of full age and capacity, who is not already a British overseas territories citizen, may be naturalised as a British overseas territories citizen regardless of existing nationality or citizenship.
- 34.1.2 Naturalisation is at the discretion of the Home Secretary (or the Governor of a British overseas territory acting on his behalf). Under **s.18** of the British Nationality Act 1981, the Home Secretary may grant a certificate of naturalisation to a person of full age and capacity if he is satisfied that the 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.
- 34.1.3 In addition to the statutory requirements for naturalisation set out in **s.18** and **Schedule 1** to the British Nationality Act 1981, it is an administrative requirement that every application should normally be supported by two referees who are British overseas territories citizens. This is explained in detail in Annex B.
- 34.1.4 Under **s.44(1)**, the Home Secretary (or the Governor) is required to exercise his discretion without regard to the race, colour or religion of the applicant for naturalisation.
- 34.1.5 Under **s.44(2)**, the Home Secretary (or the Governor) 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 However, **s.44(2)** was repealed by the **Nationality, Immigration and Asylum Act 2002** and the Home Secretary/Governor is now required to give the reason(s) for refusal in all cases.

34.1.6 In considering the exercise of discretion, it is important to look at the case as a whole. Nationality caseworkers need to be sure, before agreeing to waive a requirement, that applicants are of good character and have genuinely thrown in their lot with the British overseas territory concerned. The points which need to be considered are set out in detail in the Annexes to **Chapter 18**. These should be read with obvious adjustments (e.g. where the context requires, references to the United Kingdom should be read as references to a British overseas territory; British citizenship should be read as British overseas territories citizenship etc).

34.2 The Law

34.2.1 Naturalisation under section 18(1)

34.2.1.1 Persons may be granted certificates of naturalisation as British overseas territories citizens under **s.18(1)** of the British Nationality Act 1981 if they:

A. on the date of application:

- are of full age (i.e. aged 18 or more); and
- are of full capacity (see Annex A to **Chapter 18**); and
- meet the residence requirements set out in 34.2.1.2 below; or
- are serving outside the relevant British overseas territory in Crown service under the government of that territory (see Annex C to **Chapter 18**); and

B. at the time of consideration

- are of good character (see Annex D to **Chapter 18**); and
- remains of full capacity; and

- have a sufficient knowledge of the English language or any other language recognised for official purposes in the relevant British overseas territory (see Annex A); and
- intend, if a certificate of naturalisation as a British overseas territories citizen is granted, to:
 - a. have their home or (if they have more than one) principal home in the relevant British overseas territory; or
 - b. enter into, or continue in:
 - i. Crown service under the government of that territory; or
 - ii. service under an international organisation of which that territory or the government thereof is a member; or
 - iii. service in the employment of a company or association established in that territory (see Annex F to **Chapter 18**).

34.2.1.2 The residence requirements referred to in 34.2.1.1 above are that the applicant was:

- a. in the relevant territory at the beginning of the period of 5 years ending with the date of the application; and
- b. not absent from that territory, in that 5 year period, for more than 450 days; and
- c. not absent from that territory, in the period of 12 months ending with the date of the application, for more than 90 days; and

- d. not, on the date of the application, subject under the immigration laws to any restriction on the period of stay in that territory; 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 that territory; and
- f. not, at any time in the period of 5 years ending with the date of the application, in that territory in breach of the immigration laws.

34.2.1.3 There is discretion:

- to waive the language requirement (see Annex A)
- to waive the residence requirements set out at b, c, e and f in 34.2.1.2 above (see Annex B to **Chapter 18**)
- to waive the full capacity requirement (see Annex A to **Chapter 18**)

34.2.2 Naturalisation under section 18(2)

34.2.2.1 Persons may be granted certificates of naturalisation as British overseas territories citizens under **s.18(2)** of the British Nationality Act 1981 if, on the date of application, they:

- are of full age (i.e. aged 18 or more); and
- are of full capacity (see Annex A to **Chapter 18**); and
- are married to/in a civil partnership with a British overseas territories citizen; and
- meet the residence requirements set out in 34.2.2.2 below; and

- (if the application is made on or after 28 July 2004) have a sufficient knowledge of the English language or any other language recognised for official purposes in the relevant British overseas territory (see Annex A); and
- at the time of consideration, are of good character (see Annex D to **Chapter 18**) and still of full capacity

34.2.2.2 The residence requirements referred to in 34.2.2.1 above are that the applicant was:

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

34.2.2.3 There is discretion:

- to waive the language requirement set out in 34.2.2.1 above (if applicable). This is explained in Annex A.
- to waive the residence requirements set out at a, b, c. and e. in 34.2.2.2 above. This is explained in Annex B to **Chapter 18**.

- to waive the full capacity requirement. This is explained in Annex A to **Chapter 18**.

34.2.3 Requirements common to sections 18(1) and 18(2)

34.2.3.1 An applicant for naturalisation under either **s.18(1)** or **s.18(2)** of the British Nationality Act 1981 is regarded as being absent from the relevant territory when in that territory and:

- entitled to an exemption under the immigration laws of that territory corresponding to **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 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 that territory, or elsewhere, for any offence; or
- detained in hospital in that territory under a direction (however described) made under any law for purposes similar to **Part III** of the **Mental Health Act 1983** which was for the time being in force in that territory, being a direction made in connection with a conviction for an offence and corresponding to a hospital order under that Part of the **1983 Act**; or
- detained under any power of detention conferred by the immigration laws of that territory; or
- liable to be detained for any of the reasons above, but is unlawfully at large or absent without leave and, for that reason, is liable to be arrested

34.2.3.2 There is discretion to treat as residence in the relevant territory a period which is regarded as

absence from that territory for any of the reasons given in 34.2.3.1. This is explained in Annex B to **Chapter 18**.

34.2.4 Children included in applications

34.2.4.1 Minor children cannot be naturalised but adults may include in their application children under 18 whom they wish to become British overseas territories citizens. Such children may already be British overseas territories citizens or can be registered as British overseas territories citizens either because they have an entitlement or at the discretion of the Home Secretary/Governor (see 34.5 below).

34.2.5 Explanation of terms

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

- "British overseas territory"
- "Crown service"
- "Crown service under the government of a British overseas territory"
- "immigration laws"
- "married"
- "civil partner/civil partnership"

34.2.6 Status acquired

34.2.6.1 A person who is granted a certificate of naturalisation as a British overseas territories citizen under **s.18(1)** or **s.18(2)** is a British overseas territories citizen "otherwise than by descent" (see **Chapter 36**).

34.3 Application form

34.3.1 See **Chapter 21**.

34.4 Evidence to be supplied

34.4.1 All applications

34.4.1.1 To guard against the possibility of fraud, nationality caseworkers 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.

34.4.2 Applications under section 18(1)

34.4.2.1 Nationality caseworkers should also expect to be satisfied that the applicant meets:

- the good character requirement (see Annex D to **Chapter 18**); and
- the language requirement (see Annex A); and
- the future intentions requirement (see Annex F to **Chapter 18**); and either
- the residence requirements (see Annex B to **Chapter 18**); or
- the Crown service requirement (see Annex C to **Chapter 18**)

34.4.3 Applications under section 18(2)

34.4.3.1 Nationality caseworkers should also expect to be satisfied that the applicant meets:

- the marriage/civil partnership requirement (i.e. on the date of the application the applicant was married/in a civil partnership to a British overseas territories citizen); and
- the language requirement (see Annex A); and
- the residence requirements (see Annex B to **Chapter 18**); and

- the good character requirement (see Annex D to **Chapter 18**)

34.4.4 Children included in applications

34.4.4.1 Nationality caseworkers should expect to see evidence:

- of the children'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

34.4.5 Any evidence already on the file should be taken into account. If documents have been seen and noted in the past there is no need to ask to see them again. If the applicant's marriage or a parent and child relationship has been accepted as valid by an Entry Clearance Officer, Immigration Officer, Home Office or British overseas territories official, or any tribunal or court in the UK or a British overseas territory, 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 is needed.

34.5 Checking the application

IMPORTANT NOTE: Where an apparent claim or entitlement derives from a personal or ancestral connection with St Christopher and Nevis, it is necessary to consider the effects of the **Saint Christopher and Nevis Modification of Enactments Order 1983**. Where an apparent claim or entitlement derives from such a connection with Hong Kong, it is necessary to consider the effects of the **Hong Kong (British Nationality) Order 1986** and the **Hong Kong (British Nationality) (Amendment) Order 1993** (see **Chapter 21.4**). Where an apparent claim or entitlement derives from a personal or ancestral connection with the British Indian Ocean Territory, it is necessary to consider the effects of the **British Overseas Territories Act 2002**.

34.5.1 General principles

- 34.5.1.1 A certificate of naturalisation should not be granted to a person who is already a British overseas territories citizen, or who has an entitlement to British overseas territories citizenship under another provision of the British Nationality Act 1981. And a certificate of naturalisation cannot be granted to a person who does not meet the requirements explained in 34.2 above.
- 34.5.1.2 The guidance in 34.5.2 and 34.5.3.A below should be followed to determine whether the applicant, or any child included in the application, is already a British overseas territories citizen, or has an entitlement to British overseas territories citizenship.

34.5.2 Checking for automatic claims

- 34.5.2.1 There is always the possibility that an applicant for naturalisation, and/or any child included in the application, may already be a British overseas territories citizen.
- 34.5.2.2 If there is nothing in the papers to suggest that the applicant, and/or any child included in the application, is already a British overseas territories citizen, it is not necessary to investigate this possibility. Equally, it is not necessary to ask for proof that they did not acquire British overseas territories citizenship automatically before considering the application.
- 34.5.2.3 If the applicant, and/or any child included in the application, has an automatic claim to British overseas territories citizenship, the nationality caseworker should:
- write to say so; and

- explain that naturalisation and/or registration is not necessary (using the procedure in **Chapter 22, 23, 24** or **25** as appropriate); and
- make the appropriate refund of fee (see **Chapter 21**)

34.5.3 Checking for entitlements

A. The applicant

34.5.3.1 If the applicant is not already a British overseas territories citizen, he or she may be entitled to registration as a British overseas territories citizen:

- under **s.15(4)**, if born in a British overseas territory on or after 1 January 1983 (see **Chapter 27**); or
- under **s.22**, if a citizen of the United Kingdom and Colonies who renounced that status before 1 January 1983 (see **Chapter 32**); or
- under **s.24**, if a British overseas territories citizen who renounced that status (see **Chapter 33**); or
- 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 31**); or
- 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 31**); or
- under **paragraph 5** of **Schedule 2**, if born stateless before 1 January 1983 (see **Chapter 31**)

34.5.3.2 If the applicant is entitled to registration as a

British overseas territories citizen, the nationality caseworker should:

- write and say so; and
- explain, if appropriate, that a refund of the excess fee will be made

B. Children included in applications

34.5.3.3 If any child included in an application is not already a British overseas territories citizen, he or she may be entitled to be registered as a British overseas territories citizen:

- under the provisions at a, d, and e in 34.5.3.1 above; or
- under **s.15(3)**, if born in a British overseas territory on or after 1 January 1983 (see **Chapter 26**); or
- under **s.17(2)**, if born outside the British overseas territories on or after 1 January 1983 (see **Chapter 29**); or
- under **s.17(5)**, if born outside the British overseas territories on or after 1 January 1983 (see **Chapter 30**)

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

34.5.3.5 If there is an entitlement under **s.17(2)**, which gives British overseas territories citizenship "by descent", the guidance in the Chapters on the other sections mentioned in 34.5.3.3 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 overseas

territories citizenship "otherwise than by descent".

34.5.3.6 If there is no immediate entitlement under any provision, and no future entitlement for which the family might wish to wait, nationality caseworkers should consider whether the child(ren) can be registered at the Home Secretary's/Governor's discretion under **s.17(1)** (see **Chapter 28**).

34.6 Enquiries

34.6.1 It is the usual practice to make enquiries into all applications for naturalisation in order for nationality caseworkers to satisfy themselves that the applicants meet the statutory requirements. The nature of these enquiries will vary according to the circumstances of the applicant. Some or all of the procedures in Annex H to **Chapter 18** may be followed where appropriate.

34.7 Oath and pledge

34.7.1 For guidance on whether an applicant is required to make an oath of allegiance and, if applicable, a pledge, see **Chapter 21**. 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 to **Chapter 18**.