

## EXPLANATION OF TERMS

### 1. Meaning of "alien"

- 1.1 "Alien" means a person who is neither a Commonwealth citizen nor a British protected person nor a citizen of the Republic of Ireland.

### 2. Meaning of "authorised person"

- 2.1 The meaning of "authorised person" is not defined in the British Nationality Act 1981, but should be taken to be a person authorised by the Secretary of State to conduct citizenship ceremonies and administer the citizenship oath or pledge.
- 2.2 In Northern Ireland, "authorised person" means a Lord Lieutenant.
- 2.3 In the Channel Islands and the Isle of Man, "authorised person" means the Lieutenant-Governor (who may then authorise persons to conduct ceremonies on his behalf).
- 2.4 In a British overseas territory, "authorised person" means the Governor or Deputy Governor, any judge of any court of civil or criminal jurisdiction, any justice of the peace or magistrate, or any person for the time being authorised by the law of the place where the applicant, declarant or deponent is, to administer an oath for any judicial or other legal purpose.
- 2.5 In any Commonwealth country of which Her Majesty is Queen (or in any territory administered by the government of any such country), "authorised person" means any person for the time being authorised by

the law of the place where the deponent is, to administer an oath for judicial or other legal purpose, any consular officer or any established officer of the Diplomatic Service of Her Majesty's Government in the United Kingdom.

- 2.6 If the applicant is elsewhere, "authorised person" means any consular officer, any established officer of the Diplomatic Service of Her Majesty's Government in the United Kingdom or any person authorised by the Secretary of State in that behalf.

3. **Meaning of "British overseas territory"**

- 3.1 "British overseas territory" means a territory mentioned in **Schedule 6** to the British Nationality Act 1981 (but see also **Chapter 21.4**).

4. **Meaning of "British protected person"**

- 4.1 "British protected person" means:

- a person who is a member of a class of persons declared to be British protected persons by an Order in Council for the time being in force under **s.38**; or
- a British protected person by virtue of the **Solomon Islands Act 1978**

5. **Meaning of "civil partnership"**

- 5.1 A civil partnership is a legally-recognised relationship between two people of the same sex, conferring on the parties to that relationship many of the rights and responsibilities enjoyed or borne by married persons. The

provisions for dissolution of a civil partnership are similar to, but not identical with, those for dissolution of a marriage.

## 6. **Meaning of "Community" and "Communities"**

6.1 The meaning of "Community" and "Communities" is not defined in the British Nationality Act 1981.

6.2 The "Community" is taken to mean the European Community.

6.3 The "Communities" are taken to mean:

- The European Economic Community
- The European Coal and Steel Community
- The European Atomic Energy Community

## 7. **Meaning of "Community institution"**

7.1 "Community institution" is defined by the **Interpretation Act 1978**. It is taken to mean an institution of the European Community which is classified as such by Part 5 of the EC Treaty ("Institutions of the Community"), i.e. the European Parliament, the Council of Ministers, the European Commission, the European Court of Justice, the Court of Auditors, the Economic and Social Committee, the Committee of the Regions and the European Investment Bank. See also Annex B to **Chapter 4**.

## 8. **Meaning of "company"**

8.1 'Company' means a corporate body.

9. **Meaning of "Convention adoption"**

9.1 "Convention adoption" means an adoption:

- effected under the law of any country in which the **Convention on Protection of Children and Co-operation in respect of Intercountry Adoption**, concluded at the Hague on 29 May 1993, is in force; and
- certified in pursuance of **Article 23(1)** of the **Convention**

10. **Meaning of "Crown service"**

10.1 "Crown service" means the service of the Crown, whether within Her Majesty's dominions or elsewhere.

10.2 A person can be regarded as being in Crown service if:

- in an established permanent position, which can include a fixed-term appointment; and
- paid for the service directly from funds voted by Parliament; and
- rendering service direct to the Crown

10.3 Honorary appointments, for example as legal adviser to a British Embassy or High Commission, are not necessarily excluded from this definition.

11. **Meaning of "Crown service under the government of the United Kingdom"**

11.1 "Crown service under the government of the United Kingdom" means:

- Crown service under Her Majesty's government in the United Kingdom; or
- Crown service under Her Majesty's government in Northern Ireland
- Crown service under the Scottish Administration
- Crown service under the Welsh Assembly Government (from 6/11/2009)

12. **Meaning of "Crown service under the government of a British overseas territory"**

12.1 The meaning of "Crown service under the government of a British overseas territory" is not defined in the British Nationality Act 1981.

12.2 In appropriate cases, confirmation that a person is or was in such services should be obtained from the government of the territory concerned.

13. **Meaning of "Crown service under the government of a qualifying territory"**

13.1 "Crown service under the government of a qualifying territory" is not defined in the British Nationality Act 1981. However, it should be taken to mean Crown service under Her Majesty's government in a qualifying territory.

13.2 Because the system of administration in the British overseas territories is generally different from that in the United Kingdom, many who in this country would not be considered to be in Crown service may be in such service in a British overseas territory (e.g. police officers).

14. **Meaning of "designated service"**

14.1 "Designated service" means service of any description designated under **s.2(3)** or **s.16(3)** of the British Nationality Act 1981 to be closely associated with:

- (before 21 May 2002) the activities outside the United Kingdom of Her Majesty's government in the United Kingdom (**section 2(3)**); or
- (on or after 21 May 2002) the activities outside the United Kingdom and the qualifying territories of Her Majesty's government in the United Kingdom or in a qualifying territory (**section 2(3)**); or
- the activities outside the British overseas territories of the government of any British overseas territory (**section 16(3)**)

14.2 A list of services designated under **s.2(3)** or **s.16(3)** is given in Annex A to **Chapters 4** and **24** respectively.

15. **Meaning of "designated territory"**

15.1 "Designated territory" means a qualifying territory, or the Sovereign Base Areas of Akrotiri and Dhekelia, which is designated by order under **s.50(14)** of the 1981 Act. At present, there are NO "designated territories".

16. **Meaning of "designated person"**

16.1 "Designated person" means a person authorised by the Secretary of State under **Regulation 5A(2)** or **5A(3)** of the **British Nationality (General) Regulations 2003** to determine sufficiency of knowledge of

the English language for the purpose of an application for naturalisation under **s.6** of the British Nationality Act 1981.

17. **Meaning of "immigration laws"**

17.1 "Immigration laws" means:

- the **Immigration Act 1971**
- any law for purposes similar to that Act which is for the time being or has at any time been in force in any part of the United Kingdom.

18. **Meaning of "in breach of the immigration laws"**

Before 13 January 2010

18.1 **Section 11** of the **Nationality, Immigration and Asylum Act 2002** explains that a person is "in breach of the immigration laws" if he:

- a. is in the United Kingdom;
- b. does not have the right of abode in the United Kingdom within the meaning of **s.2** of the **Immigration Act 1971**;
- c. does not have leave to enter or remain in the United Kingdom (whether or not he previously had leave);
- d. is not a qualified person within the meaning of the **Immigration (European Economic Area) Regulations 2000** (SI.2000/2326) (person entitled to reside in the United Kingdom without leave) (whether or not he was previously a qualified person);

- e. is not a family member of a qualified person within the meaning of those regulations (whether or not he was previously a family member of a qualified person);
- f. is not entitled to enter and remain in the United Kingdom by virtue of **s.8(1)** of the **Immigration Act 1971** (crew) (whether or not he was previously entitled); and
- g. does not have the benefit of an exemption under **s.8(2)** to **s.8(4)** of the **1971 Act** (diplomats, soldiers and other special cases) (whether or not he previously had the benefit of an exemption)

18.2 As regards EEA nationals and their family members (d. and e.), this section came into force on 7 November 2002. In other cases, this section is deemed **always** to have been in effect.

18.3 This definition has been repealed (see below), but continues to apply in regard to determining whether:

- a person born **before** 13 January 2010 is a British citizen
- a person who had applied for registration under **s.1(3)** or **s.4(2)**, and whose application was undetermined on 13 January 2010, was entitled to be registered as a British citizen
- a person whose application for naturalisation as a British citizen was undetermined on [13 January 2010 satisfied the requirements in **Schedule 1** of the 1981 Act
- a person who applied for naturalisation or for registration under **s.1(3)** on or after 13 January 2010 was in breach of the immigration laws at any time before 7 November 2002



On or after 13 January 2010

18.3 The **Borders, Citizenship and Immigration Act 2009** replaced the definition in 18.1. With effect from 13 January 2010 , a person is regarded as being in breach of the immigration laws if he or she:

- a. is in the United Kingdom;
- b. does not have the right of abode in the United Kingdom within the meaning of **s.2** of the **Immigration Act 1971**;
- c. does not have leave to enter or remain in the United Kingdom (whether or not he previously had leave);
- d. does not have a qualifying CTA (Common Travel Area) entitlement (see paragraph 25 below);
- e. is not entitled to reside in the United Kingdom by virtue of **s.2(2)** of the **European Communities Act 1972** (whether or not the person was previously entitled);
- f. is not entitled to enter and remain in the United Kingdom by virtue of **s.8(1)** of the **Immigration Act 1971** (crew) (whether or not he was previously entitled); and
- g. does not have the benefit of an exemption under **s.8(2)** to **s.8(4)** of the **1971 Act** (diplomats, soldiers and other special cases) (whether or not he previously had the benefit of an exemption)

19. **Meaning of "local authority"**

19.1 "Local authority" means:

a. in England and Wales:

- a county council
- a country borough council
- a metropolitan district council
- a London Borough Council
- the Common Council of the City of London

b. in Scotland:

- a council constituted under **s.2 of the Local Government etc. (Scotland) Act 1994**

20. **Meaning of "married"**

20.1 The word "married" is not defined in the British Nationality Act 1981.

20.2 "Married" should be taken to mean validly married in United Kingdom law.

21. **Meaning of "member of the armed forces"**

21.1 "Member of the armed forces" means:

- a member of the regular forces within the meaning of the **Armed Forces Act 2006**, or

- a member of the reserve forces within the meaning of the **2006 Act** subject to service law by virtue of **s.367(2)(a)-(c)** of that Act

21.2 However, a person is not regarded as being a "member of the armed forces" if he or she is treated as a member of the regular or reserve forces by virtue of:

- **s.369** of the **Armed Forces Act 2006\***, or
- **s.4(3)** of the **Visiting Forces (British Commonwealth) Act 1933\***

\* These relate to members of the forces raised in a British overseas territory who are serving, or undergoing training, with the regular or reserve forces mentioned in 21.1 and members of another country's armed forces (e.g. as part of a coalition force).

## 22. **Meaning of "a member of the Communities"**

22.1 The members of the Communities are:

|                |            |                |
|----------------|------------|----------------|
| Austria        | Germany    | Netherlands    |
| Belgium        | Greece     | Poland         |
| Bulgaria       | Hungary    | Portugal       |
| Cyprus         | Ireland    | Romania        |
| Czech Republic | Italy      | Slovakia       |
| Denmark        | Latvia     | Slovenia       |
| Estonia        | Lithuania  | Spain          |
| Finland        | Luxembourg | Sweden         |
| France         | Malta      | United Kingdom |

## 23. **Meaning of "ordinary residence"**

23.1 "Ordinary residence" is not defined in the British Nationality Act 1981, except to the extent that **s.50(5)** of the Act makes it clear that a person who is in the United Kingdom or in a British Overseas territory "in breach of the immigration laws" is NOT to be considered ordinarily resident there.

23.2 The courts have held that if there can be proven a regular habitual mode of life in a particular place, the continuity of which has persisted despite temporary absences, ordinary residence is established provided only that it is adopted voluntarily and for a settled purpose (and provided it is lawful) (see "**ORDINARY RESIDENCE**" in Volume 2).

#### 24. **Meaning of "parent"**

24.1 In relation to a person born before 1 July 2006, "parent" means:

- the mother of a legitimate or illegitimate child, or
- the father of a legitimate child only (NB a child may be legitimated by the subsequent marriage of the parents)

24.2 In relation to a person born on or after 1 July 2006 and who is conceived on or before 5 April 2009,

- the mother is the woman who gives birth to the child, and
- the father is either:
  - (a) the mother's husband, if any, at the time of the child's birth,
  - (b) any person who is treated as the father under **s.28** of the **Human Fertilisation and Embryology Act 1990** (see Volume 2, **SURROGACY**), or

(c) (if neither of the above applies) a person who is proven to be the father by the production of either:

(i) a birth certificate identifying him as such, and issued by the competent registration authority within 12 months of the birth of the child to which it relates or

(ii) such other evidence (eg a DNA test report or court order) as may satisfy the Secretary of State in this point.

#### 24.3 In relation to a person conceived on or after 6 April 2009

- the mother is the woman who gives birth to the child, and

- the father is either

(a) the mother's husband, if any, at the time of the child's birth,

(b) any person who is treated as the father under **s.35** or **36** of the **Human Fertilisation and Embryology Act 2008** (see Volume 2, **SURROGACY**), or

(ba) a person who is treated as a parent of the child under **s.42** or **43** of the **Human Fertilisation and Embryology Act 2008** (second female parent), or

(c) (if neither of the above applies), a person who is proven to be the father by the production of either:

(i) a birth certificate identifying him as such, and issued by the competent registration authority within 12 months of the birth of the child to which it relates or

(ii) such other evidence (e.g. a DNA test report or court order) as may satisfy the Secretary of State in this point.

24.4 The legislation does not specify what forms of evidence apart from those specifically mentioned in paragraph 24.2(c)/24.3(c) above might constitute sufficient proof of paternity. However, we may normally accept that a man is the father of an illegitimate child if

- paternity has been acknowledged in some other official context – for example, if the child was born abroad and there is reliable evidence that the claimed relationship has been accepted for United Kingdom immigration purposes; or
- he has stated that he is the father and we have confirmation of that from the mother, provided there is no evidence to suggest that their evidence is false (e.g. given in the hope of gaining an immigration advantage)

24.5 The acquisition of a gender recognition certificate (see "**GENDER RECOGNITION ACT**" in Volume 2 Section II) does not alter the recipient's status as the parent of a child.

25. **Meaning of "qualifying CTA entitlement" (Common Travel Area)**

25.1 A person has a "qualifying CTA entitlement" if he or she:

- is a citizen of the Republic of Ireland,

- last arrived in the United Kingdom on a local journey (within the meaning of the **Immigration Act 1971**) from the Republic of Ireland, and
- on that arrival, was a citizen of the Republic of Ireland and was entitled to enter without leave by virtue of **s.1(3)** of the **Immigration Act 1971** (entry from the common travel area)

26. **Meaning of "qualifying territory"**

26.1 "Qualifying territory" means a British overseas territory other than the Sovereign Base Areas of Akrotiri and Dhekelia.

27. **Meaning of "recruitment in a British overseas territory/qualifying territory"**

27.1 "Recruitment in a British overseas territory/qualifying territory" is not defined in the British Nationality 1981.

27.2 Persons can be taken to have been recruited in a British overseas territory/qualifying territory if they:

- were employed as a result of recruitment initiatives - advertisements, university/career fair visits etc - in a British overseas territory/qualifying territory; or
- went through a selection process in a British overseas territory/qualifying territory; or
- hold a contract of employment made in a British overseas territory/qualifying territory

27.3 An explanatory note, which may be issued to British overseas posts seeking guidance, is included at Annex A(i) to **Chapter 4**.

28. **Meaning of "recruitment in a country which at the time of the recruitment was a member of the Communities"**

28.1 "Recruitment in a country which at the time of the recruitment was a member of the Communities" is not defined in the British Nationality Act 1981.

28.2 Persons can be taken to have been recruited in a country which was then a member of the Communities if they:

- were employed as a direct result of recruitment initiatives - advertisements, university/careers fair visits etc - in such a country; or
- went through a selection process in such a country; or
- hold a contract of employment made in such a country

NB. This does not include recruitment in a country which, at the time, was an Associate member of the Communities.

29. **Meaning of "recruitment in the United Kingdom"**

29.1 "Recruitment in the United Kingdom" is not defined in the British Nationality 1981.

29.2 Persons can be taken to have been recruited in the United Kingdom if they:



- were employed as a result of recruitment initiatives - advertisements, university/career fair visits etc - in the United Kingdom; or
- went through a selection process in the United Kingdom; or
- hold a contract of employment made in the United Kingdom

29.3 An explanatory note, which may be issued to British overseas posts seeking guidance, is included at Annex A(i) to **Chapter 4**.

### 30. **Meaning of "registrar"**

30.1 "Registrar" means:

- (in England and Wales) a superintendent registrar of births, deaths and marriages or a deputy superintendent registrar (in accordance with **s.8 of the Registration Service Act 1953**)
- (in Scotland) a district registrar within the meaning of **s.7(12) of the Registration of Births, Deaths and Marriages (Scotland) Act 1965**

### 31. **Meaning of "registration in the United Kingdom"**

31.1 "Registration in the United Kingdom" includes registration:

- at the Home Office
- in the Channel Islands
- in the Isle of Man

- before 1 January 1983, in an independent Commonwealth country at a British High Commission\* by virtue of arrangements made under **s.8(2)** of the **British Nationality Act 1948**

\* Includes the British Embassy in South Africa between 31 May 1962 and 31 December 1965 inclusive

31.2 It does not include registration:

- under **s.6(2)** of the **British Nationality Act 1948**, if the marriage took place on or after 28 October 1971
- under **s.7** of the **British Nationality Act 1948**, at a British High Commission on or after 28 October 1971

## 32. **Meaning of "service under a Community institution"**

32.1 "Service under a Community institution" is not defined in the British Nationality Act 1981. It is taken to mean service under any of the institutions listed in Annex B to **Chapter 4**.

## 33. **Meaning of "settled"**

33.1 A person is settled in the United Kingdom if, subject to the exceptions described in 33.3 below, he or she:

- is not subject under the immigration laws to any restriction on the period for which he or she may remain; and
- is ordinarily resident in the United Kingdom

33.2 Unless there is clear evidence to the contrary, a person living here free of immigration restrictions may be assumed to be ordinarily resident in the United Kingdom. This includes holders of certificates of entitlement or patriality showing they have the right of abode in the United Kingdom.

33.3 Persons who are not regarded as "settled" include:

- those entitled to an exemption from immigration control under **s.8(3)** of the **Immigration Act 1971** as amended by **s.4** of the **Immigration Act 1988** (i.e. members of diplomatic missions in the United Kingdom and members of their family living with them), unless they were settled in the United Kingdom before their entitlement to an exemption began and were ordinarily resident in the United Kingdom from the time their entitlement to exemption began to the time of the birth of the child. (NB This exception does not apply if, at the time of the birth, the child's father or mother was a person on whom any immunity from jurisdiction is conferred by or under the **Diplomatic Privileges Act 1964**)
- those entitled to an exemption from immigration control under **s.8(2)** of the **Immigration Act 1971** (i.e. consular staff and certain employees of international organisations) unless they were settled in the United Kingdom before their entitlement to an exemption began
- those entitled to an exemption from immigration control under **s.8(4)(b)** and **(c)** of the **Immigration Act 1971** (i.e. members of Commonwealth or visiting forces)
- those here in breach of the immigration laws

- those with limited leave under the immigration laws to enter or remain in the United Kingdom
- holders of certificates of entitlement or patriality resident abroad
- persons whose right to remain under the EC Treaty is time-limited or conditional on their being engaged in a particular activity etc

33.4 A person is settled in a British overseas territory if, subject to the exceptions described in 33.6 below, he or she is:

- not subject, under the immigration laws of that territory, to any restriction on the period for which he or she may remain; and
- ordinarily resident in that territory

33.5 Unless there is clear evidence to the contrary, a person living in a British overseas territory free of immigration restrictions may be assumed to be ordinarily resident in there.

33.6 Persons who are not regarded as 'settled' include those who are entitled to an exemption corresponding to any of the following:

- Exemption from immigration control under **s.8(3)** of the **Immigration Act 1971**, as amended by **s.4** of the **Immigration Act 1988** (i.e. members of diplomatic missions in the United Kingdom and members of their family living with them)
- Exemption from immigration control under **s.8(2)** of the **Immigration Act 1971** (i.e. consular staff and certain employees of international organisations)

- Exemption from immigration control under **s.8(4)(b)** and **(c)** of the **Immigration Act 1971** (i.e. members of Commonwealth or visiting forces)

33.7 There may also be other categories of persons who are not regarded as settled in a British overseas territory. This will depend upon the local immigration laws. The authorities of the relevant territory should be consulted in cases of doubt.

34. **Meaning of "United Kingdom"**

34.1 "United Kingdom" means Great Britain (England, Wales, Scotland), Northern Ireland, the Channel Islands and the Isle of Man taken together.

N.B. United Kingdom territorial waters do not form part of the United Kingdom for nationality purposes.