

Nationality Instructions

Procedural section

Letters (advice to potential applicants)

1. Potential applications

1.1 Care should be taken when drafting letters to potential applicants for naturalisation or discretionary registration not to raise expectations of a successful outcome. No indication can be given in advance of an application that it might be successful as the outcome is dependent upon all the facts at the time of consideration.

1.2 We should not normally agree to exercise discretion over a requirement in advance of an application for naturalisation being made. Where circumstances suggest, for example, that large absences might be waived, the applicant may be advised to submit an application explaining the special circumstances at the time. It should nevertheless be made clear that the outcome of any such application would depend upon full consideration of all the facts at the time of application.

1.3 We should be as helpful as possible in explaining to potential applicants what factors are taken into account when considering whether discretion should be exercised. If it seems unlikely that discretion would be exercised over a requirement (see paragraph 2.1) then that should be indicated to the applicant. We cannot refuse to accept an application, however, and it is open to an applicant to apply at any time.

1.4 If an applicant obviously fails to meet an unwaivable requirement then it should be pointed out and, if relevant, a date given on which the requirement would be met.

1.5 A draft letter for potential applicants for naturalisation is at the Annex below.

2. The discretion of the Secretary of State

2.1 The discretion of the Secretary of State is at large and we should avoid using phrases which indicate that it is fettered or of a limited nature (e.g. 'there is no discretion to [waive absences on this scale]'). It is preferable to use a form of words such as 'Whilst the Secretary of State has discretion to [waive excess absences], he is not prepared to do so in your case' or 'would not normally expect to do so in [... circumstances]'. See the Annex below for suggested forms of words. Volume 1 contains 'guidelines' on the exercise of discretion, which should not be confused with 'requirements'. Sometimes it will be right to depart from the guidelines because of the particular circumstances of a case.

2.2. This is particularly important when writing to applicants or their solicitors in cases involving registration of minors under the normal discretionary provisions of s.3(1) BNA 1981 (Chapter 9.14 of Volume 1). In the past, we have been challenged by solicitors asking where the requirements are set out in the Act, after this term has been used in correspondence. A formulation such as "the Secretary of State would normally expect" avoids this pitfall. A draft letter is at Annex C to Chapter 9 of Volume 1.

Annex – Draft omnibus letter

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Dear

I refer to your enquiry about naturalisation as a British citizen under section 6(1)/6(2) of the British Nationality Act 1981. The requirements for naturalisation under this section are set out in part A/B of the enclosed leaflet BN7.

unwaivable requirement not met

From the information available it appears that you [did not come to the United Kingdom until] you do not therefore appear to meet the unwaivable requirement set out in paragraph [3(i)/7(i)] of the leaflet [and will be unable to do so until].

In deciding whether to waive absences from the UK in excess of those normally allowed, the Secretary of State will take the following factors into account:

- i. the extent of the excess absences;
- ii. the length of the applicant's residence in the UK before the start of the 5/3 year qualifying period;
- iii. whether the applicant has established his/her home, family and substantial part of estate in the UK;
- iv. the reasons for the absences;
- v. whether other statutory requirements are met

request for waiver of excess absences: grant

It is open to you to make an application for naturalisation at any time. Any special circumstances should be explained at the time an application is lodged. The outcome of such an application would depend upon full consideration of all the facts at the time.

request for waiver of excess absences: likely refusal

It is open to you to apply for naturalisation at any time. However, whilst the Secretary of State has discretion to [waive absences] he would not normally expect to do so in [... circumstances].

Yours
Integrated Casework Directorate