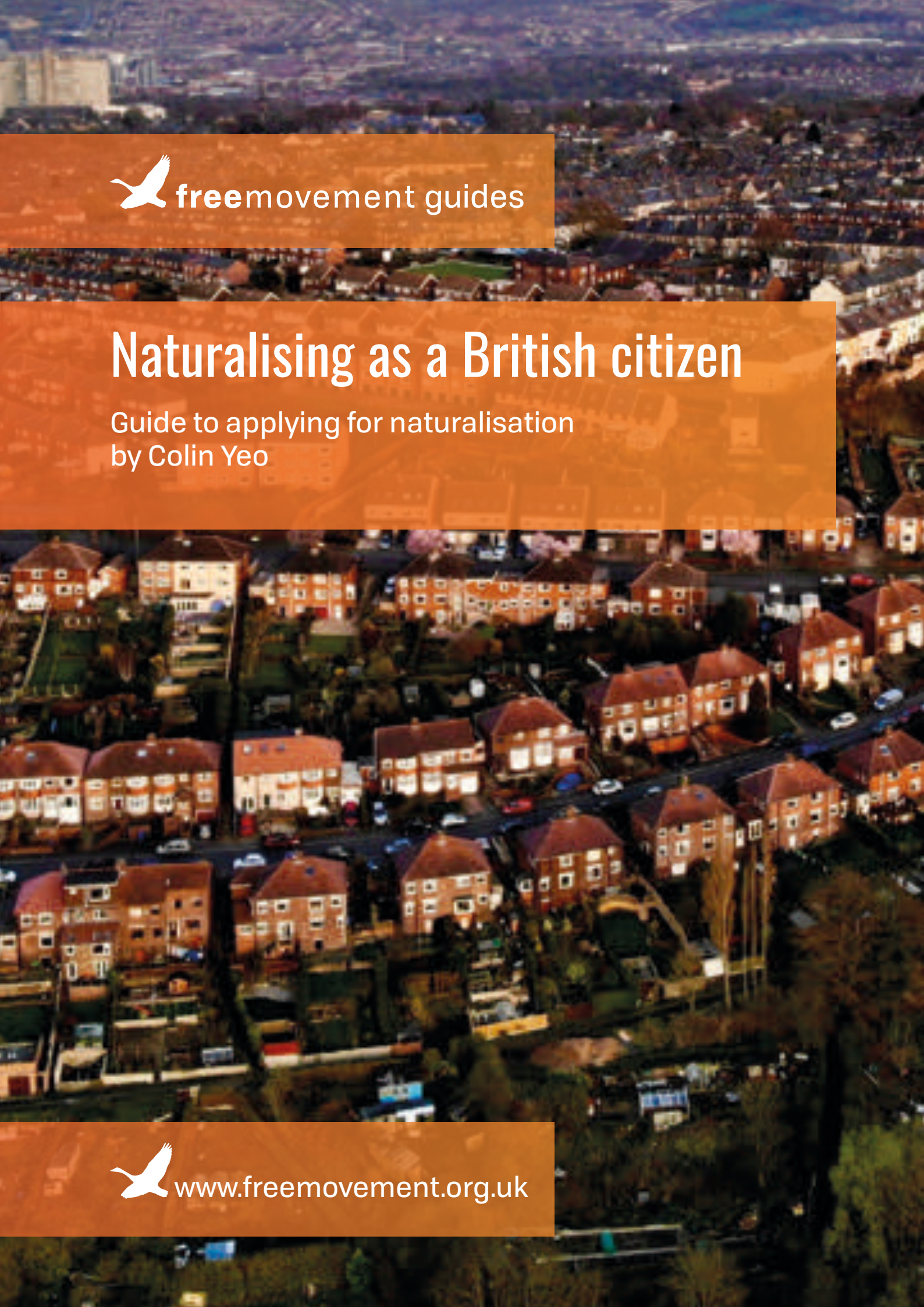


freemovement guides

Naturalising as a British citizen

Guide to applying for naturalisation

by Colin Yeo

www.freemovement.org.uk

2nd edition (revised)

CONTENTS

Video chat

Got a question? Ask an expert.

If there is something you aren't sure about — what application to make, what documents to include, what proof is needed, whether you qualify — then ask one of the Seraphus Solicitor experts online (or on the phone if you prefer!).

£99 plus VAT for a half hour session

Application check

Get it checked before you send it.

If you have prepared an application yourself but want the form and documents checking before you send it, our checking service is for you. An expert solicitor will recommend improvements and identify any missing evidence.

£249 plus VAT

Full assistance

Get an expert to do it all for you.

Too busy to prepare an application yourself? Or worried about doing it properly? We can do it all for you, so you can relax and be confidence your case is managed by genuine experts.

Starting at £499.99 plus VAT for settled status applications

with Seraphus Solicitors

Fixed price

Instant info

Expert lawyers

available at freemovement.org.uk/legal-advice

FOREWORD

Applying to naturalise as a British citizen is a big step. A successful application will bestow not just the right to live in the United Kingdom but also to vote in all elections and participate fully in the life of the community.

In 2018, 157,000 foreign nationals became British citizens. Around 6% of applications were rejected, the majority because of failure to meet the "good character" or residence requirements.

The largest groups in terms of previous citizenship were Indians (9% of the total), Pakistanis (8%), Poles (6%), and Nigerians (4%). Almost one third of grants were to EU nationals. A few years ago, Europeans accounted for less than one in ten. The change is presumably because of the uncertainty caused by Brexit.

This ebook is intended to guide applicants for naturalisation though the process successfully, help them to avoid potential pitfalls, explain what the legal requirements are, which rules are flexible and which rules are mandatory. Examples and case studies are used throughout to illustrate complex points.

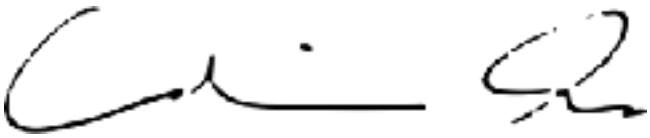
I hope the ebook is useful. It is intended to help readers avoid potential refusal and navigate the process smoothly.

I am very grateful to John Vassiliou of McGill & Co Solicitors for his work on this second edition of the ebook, which reflects some changes to Home Office policy and practice in the two years since it was first published. Nath Gbikpi of Wesley Gryk Solicitors and Nick Nason of Edgewater Legal assisted with the first edition. Any errors are my own.

If you are a solicitor, barrister or OISC adviser and would like to claim CPD hours for reading this material, head over to www.freemovement.org.uk and sign up as a member. We have a training course available based on the same

material as well as many other courses on other aspects of immigration law. Annual membership starts at £60 per person for groups of ten and gives access to a growing suite of immigration training resources.

Do get in touch if you have comments or suggestions.



Colin Yeo

June 2019

INTRODUCTION

What is naturalisation?

An application for "naturalisation" is an application by an adult who is not a British citizen to become a British citizen.

The application is normally made and paid for online via the gov.uk website, although a paper form, Form AN, can still be used.

If the application succeeds, the successful applicant can then become a British citizen at a later citizenship ceremony.

British citizenship is not an exclusive status, at least in British law: it is possible in British law to be a British citizen and also a citizen of one or more other countries. Such a person is often referred to as a "dual national" because he or she holds the citizenship of two (or more) countries. However, there are some countries that do not permit dual nationality and acquiring British citizenship can automatically cause the previously held citizenship of another country to be lost.

A person who successfully applies for naturalisation becomes a type of British citizen called a British citizen "otherwise than by descent". The person's children born after naturalisation are automatically born British, whether the children are born in the UK or abroad.

British citizenship acquired by naturalisation can be lost in three ways:

(i) If the applicant assumed a false identity to apply then the citizenship can later be nullified, meaning that it was never really granted in the first place and the person has never in truth been a British citizen;

(ii) A person can be deprived of their British citizenship in certain circumstances, for example on public good grounds;

(iii) It is possible voluntarily to renounce British citizenship.

Are all the requirements for naturalisation mandatory?

Home Office officials can waive some of the requirements for naturalisation but not others.

The criteria which must always be satisfied for a naturalisation application to succeed are referred to as mandatory criteria.

The criteria where exceptions can be made in certain circumstances are referred to as discretionary criteria. Where the criterion is a discretionary one, a lawyer would say that the decision maker on the application must "exercise his or her discretion".

Confusingly, there are also some mandatory criteria which must be satisfied but which are somewhat woolly in nature and where the decision maker must exercise some judgement to decide whether the criterion is satisfied or not. This is true, for example, of the "good character" test. This *must* be met for a person to be naturalised as a British citizen but judgement must be exercised by the decision maker when deciding whether the requirements are met.

Examples

One of the requirements for naturalisation is whether a person was lawfully present in the UK five years before the application date. This is a mandatory requirement and there is no discretion to waive it.

Another requirement is that the applicant must not have been outside the UK for more than 90 days in the final year leading up to the application. This is a discretionary requirement and can be waived. The nationality policy guidance describes the circumstances in which it might potentially be waived.

Another requirement is that the applicant is of good character. This is a mandatory requirement but discretion is exercised in deciding whether it is fulfilled or not. For example, a person has a series of driving

convictions. Whether or not that person is of good character is a question where a judgment has to be made by the decision maker.

The requirements are set out in the British Nationality Act 1981, which also specifies whether the criteria are mandatory or discretionary.

Guidance is provided by the Home Office to its officials and decision makers in various policy documents. These are mainly publicly available on the gov.uk website. It is not at all necessary to read them – indeed the purpose of this ebook is so that you don't have to – but if you want to check a particular point in detail they may be useful:

- General naturalisation
- Good character
- Assessing ordinary residence
- Form AN guidance
- And many more

What happens to your existing nationality?

In British nationality law there is no problem with dual nationality, which is where a person holds the nationality of two or more countries.

This is not the case in all countries. Some countries only permit their citizens to hold one citizenship, their own. If a person acquires another nationality, that person may automatically lose their existing nationality.

The author knows a lot about British nationality law but next to nothing about the citizenship laws of other countries. Anyone considering applying for British citizenship would be well advised to research carefully what may happen to their original citizenship in the event they become a British citizen. It would be wise to consult the embassy or consulate of the country concerned. Information can sometimes be found online but, as always, care

must be taken with information obtained from the internet, which is not always accurate and is not tailored to the individual concerned.

Example

Hiren is an Indian citizen considering an application for naturalisation as a British citizen. He checks the website of the High Commission of India and sees that "the Indian Citizenship Act, 1955, does not allow dual citizenship". Hiren should check with the High Commission or local consulate whether this information is current and confirm that UK citizenship entails the automatic loss of his Indian citizenship before proceeding with his application.

The European Union Democracy Observatory on Citizenship may include information useful to EU citizens.

Criteria for naturalisation as a British citizen

Applicants will normally be eligible to apply for naturalisation if they:

- are 18 or over
- are of “good character”
- have an intention to continue to live in the UK
- meet the knowledge of English and life in the UK requirements
- meet the residency requirement

We will look at each of these criteria in more detail below.

The grant of British citizenship by naturalisation is an example of a “discretionary” power. This means that the Secretary of State (via officials working at the Home Office) can decide to refuse to naturalise an applicant even if they meet the criteria set out above, usually justified by asserting the person is not of good character.

Such refusals are fairly rare and normally involve high-profile cases or figures. In general, if an applicant meets the criteria set out above, they can expect to be naturalised as citizens.

Other types of British citizenship entitlement or application

Naturalisation is not the only way that is possible to apply to become a British citizen. Some people are automatically born British citizens and do not need to apply for citizenship, just for a passport to prove their citizenship. Others who are not currently British citizens can apply for "registration".

Registration is like naturalisation: it is only when a successful application has been made that the person becomes a British citizen. If an application is not made, the person never becomes British.

In the rest of this chapter we'll cover these other routes, for the sake of completeness. If you are sure that you are applying for naturalisation rather than any other route to citizenship, skip ahead to the next chapter.

Automatically born British

Born in the UK

Any child born in the UK to a parent who is British or settled is automatically born a British citizen by operation of law. This is because of section 1(1) of the British Nationality Act 1981, which reads:

> *A person born in the United Kingdom … shall be a British citizen if at the time of the birth his father or mother is—*
>
> *(a) a British citizen; or*
>
> *(b) settled in the United Kingdom*

The words “shall be” make this process an automatic one. Only one of the parents needs to be settled, not both. However, there may sometimes be a question over whether the parent is really settled in the UK and therefore whether the child really is a British citizen or not. This can arise for the children of EU citizens where it is not clear whether or not a parent held permanent residence.

Example

Pavel was born in the UK to two Polish parents. The parents entered the UK in 2006 and have lived in the UK continuously since then. They have never applied for permanent residence documents.

Permanent residence is automatic, though, and either or both of the parents may well have acquired permanent residence even though they have not applied for documents proving it. To find out whether Pavel is a British citizen or not they will need to apply for a passport for him, sending in evidence of five continuous years of one or both of them being a qualified person (worker, self employed, self sufficient with health insurance or student with health insurance).

Where a child is born British in this way a passport application is made rather than having to apply for registration. The child does not *have* to apply for a passport at all unless wishing to travel abroad but a passport application can be made at any time, including once the child is over the age of 18.

Born outside the UK

In general, a child born outside the UK to a British citizen is also automatically born a British citizen. This is by virtue of section 2(1) BNA 1981.

However, this is only true for the first generation born outside the UK. Section 2(1) BNA 1981 actually states that a child born outside the UK to a

parent who is a British citizen "otherwise than by descent" is automatically born British. A "British citizen otherwise than by descent" is any British citizen *other than one born outside the UK*; it could be a British citizen born, registered or naturalised in the UK.

Example

Laura is a British citizen born in the UK to British parents. She moves abroad, to Australia. She has a child, Lawrence.

Lawrence is automatically born British. Laura is a "British citizen otherwise than by descent" and therefore section 2(1) BNA 1981 confers British citizenship on Lawrence automatically.

Lawrence then later has a child, Laurentia. Lawrence is a British citizen by descent and therefore section 2(1) BNA 1981 does *not* confer British citizenship automatically on Laurentia (although she can potentially be registered as a British citizenship on application, as discussed below).

There is another section of the BNA 1981 which enables the child of a British citizen by descent to be registered as British: section 3(2). This is not automatic, however, and the child only becomes British if a paid application for registration is successfully made. See further below.

Adoption

A child who is adopted by a British citizen becomes a British citizen automatically by operation of law by virtue of section 1(5) where the adoption order was granted by a court in the UK. If the adoption order was granted by a court outside of the UK, the entire adoption process must have been completed under the Hague Convention on Intercountry Adoption procedure. It is not enough for an adoption to have simply taken place in a country that is a signatory to the Hague Convention. Additionally, for a Hague Convention adoption to confer British citizenship, section 1(5A) must be satisfied. This

stipulates that the adopter (or in a joint adoption, the adopters) must have been habitually resident in the UK at the time of the Hague Convention adoption.

Registering for a person born in the UK

There are two main circumstances where a person born in the UK who was not originally born British can be registered as British:

(i) Where the applicant is still below the age of 18 and where one or both of the parents of a child born in the UK become settled (section 1(3) of BNA 1981); and

(ii) Where the applicant is an adult or child and was born in the UK and lived his or her first ten years in the UK (section 1(4) of BNA 1981)

Neither of these possibilities is automatic; an application for registration *must* be made or the person does not become British. The good character test will be applied. Possibility (i) is lost forever once a child turns 18. Possibility (ii) can be exercised even after the child turns 18.

Registering as a child born abroad

We have already seen that where a child is born abroad to a British citizen parent otherwise than by descent, the child is automatically born British under section 2(1) BNA 1981. This means that where a British citizen moves abroad, generally the first generation of children are automatically born British citizens, although they are classified as “British citizens by descent”. What about the children of those children, i.e. the second generation?

Because the first generation born abroad are “by descent”, section 2(1) BNA 1981 does not automatically confer British citizenship on the second generation of children. However, the second generation can be registered as British on application under section 3(2) as long as the application is made

before the child turns 18, and the British by descent parent has completed a three year period of continuous residence in the UK at some point prior to the child's birth. If no application is made, the child in question never becomes British, even if the residence criterion was met.

Example

Stephen was born in the Republic of Ireland. Both his parents are British citizens, born in Belfast. Steven moves to the UK for university and stays on to work for several years before returning to Ireland to marry an Irish woman. They have a child, Wilma, born in Ireland. Wilma is entitled to be registered as a British citizen, because her father is a British citizen by descent who has lived in the UK for a period of at least three continuous years prior to her birth, and her grandparents are British citizens otherwise than by descent.

The nationality laws of any country will always set some sort of limit on how far down the generations nationality can be claimed by the descendants of a citizen who moves abroad. In short, British nationality law settles that question by providing that in general the first generation born abroad are automatically British, the second generation are not automatically born British but can be registered and the third generation are not generally entitled to British citizenship at all.

Registering as an adult who is a British national but not British citizen

As discussed below, there are some other types of British nationality other than British citizenship. These types of British national can sometimes qualify to register as British citizens, for example where they meet the other naturalisation requirements.

Although the process of becoming a British citizen is described as "registration" for other types of British national rather than "naturalisation" there is little difference in practice. The same residence and good character tests apply, for example. The form to use is Form B(OS).

Other categories or circumstances

There is a general power for the Secretary of State to register *any* child as a British citizen. This power is conferred by section 3(1) of the British Nationality Act 1981:

> *If while a person is a minor an application is made for his registration as a British citizen, the Secretary of State may, if he thinks fit, cause him to be registered as such a citizen.*

However, the circumstances where such registrations occur outside the other categories are generally very limited.

A person may also be eligible for registration if:

- he or she was born before 1 January 1983 to a British mother
- he or she was born to a British father, even if he was not married to his or her mother
- he or she has a connection with Gibraltar or Hong Kong
- he or she is stateless

As well as belonging to one of these groups there are other eligibility rules for each category, although these are beyond the scope of this guide.

Other types of British nationality

Due in large part to its colonial past, British nationality law is extremely complex, with a large number of different categories of British citizenship in existence. These include (but are not limited to):

- British Citizenship
- British Overseas Territories Citizenship (previously called British Dependent Territories Citizenship)
- British Overseas Citizenship
- British Subject status
- British Protected Persons

Before the coming into force of the British Nationality Act 1981 on 1 January 1983 there was no such status as “British citizen” at all. Before 1948 there were just “British subjects”. Under the British Nationality Act 1948 the relevant status was “Citizenship of the United Kingdom and Colonies”. Not all such citizens were treated equally, however, and by the time of the British Nationality Act 1981 complex rules on parentage and “patriality” determined whether a person could live in the UK or not.

As mentioned above, it may be possible to register as a ‘full’ British citizen, rather than naturalise, if you hold one of these types of citizenships.

AGE

The first and simplest requirement for naturalisation is that the applicant is aged 18 or over. Put simply, children are not able to naturalise.

There is nothing more to say about this criterion, which is self explanatory. However, it may be helpful briefly to review the options which might be available to children who are not currently British citizens.

Options for children

Already British without knowing it

Some children born in the UK may already be British without the child or parents having realised this.

For example, where a person has the EU law status of permanent residence, he or she is considered to be settled for the purpose of section 1(1) BNA 1981, meaning that any child born to that person in the UK will automatically be born British.

The status of permanent residence is one which is silently and automatically acquired. An application can be made for proof in the form of a permanent residence certificate or card, but these documents are merely evidence of the underlying right; they do not confer the right.

This means that a person may have acquired permanent residence without knowing it and that the person's children may be British without the parent being aware of that fact. *It is not necessary to hold a permanent residence document in order for a child automatically to be born British.*

Where this occurs, all that is needed is to make a passport application with evidence of the child's eligibility, which will generally be evidence that the parent had acquired permanent residence. Five continuous years of P60 documents would suffice for an employee, for example.

Example

Paula is an EU citizen. She has been living and working in the UK for ten years and automatically acquired permanent residence five years ago. She has never applied for permanent residence documents and only heard of permanent residence recently.

She has a child, Simon, who was born two years ago. Whether or not Paula knows it, Simon is already a British citizen by operation of law and is entitled to apply for a British passport. He will always be British unless he renounces his British citizenship.

Child or adult born in UK and aged ten or over

Any person, whether child or adult at the date of application, can be registered as British citizens if he or she was

- born in the UK; **and**
- lived continuously for the first ten years of his or her life in the UK.

The application can be made on any day after the child's tenth birthday, including in adulthood. The good character requirement must be met.

Parent becomes settled after birth of the child

A UK-born child will also be eligible for registration as a British citizen if one or both of his or her parents has:

- been granted Indefinite Leave to Remain in the UK **or**
- acquired permanent residence (whether or not a permanent residence document has been issued), **or**
- become a British citizen.

The application can be made as soon as the parent has acquired his or her qualifying status.

Other grounds

There is a third, discretionary, route for children, where an application can be made on behalf of a child whose future "clearly lies in the UK".

Guidance on what this means, in addition to other situations where the Home Office may decide to exercise their discretion and grant citizenship to a child, can be found in nationality policy guidance document Registration as a British citizen: children.

Making an application

For all three of these routes the Home Office require the applicant child to meet the "good character" requirement if over the age of ten (of which more below). Applications for registration of children are made online or on form MN1, which is accompanied by a guide. The fee for the application is at the time of writing £1,012 plus £19.20 for biometric enrolment.

RESIDENCE REQUIREMENTS

There are residence requirements for a person to naturalise as a British citizen. The basic requirement is that applicants must have spent a certain period of time in the UK before they are eligible to apply for citizenship. The requirements are, in brief:

- The person must be free of immigration restrictions, usually meaning possession of Indefinite Leave to Remain or permanent residence
- Three years' residence for spouses of British citizens
- Five years' residence for non spouses (in truth five years is necessary in most cases, as we shall see)
- Only a certain number of absences from the UK are permitted during those periods
- The residence must be lawful
- The person must have been present in the UK three or five years before the application date (depending on whether they are or are not a spouse of a British citizen)

The residence requirements are largely discretionary: an applicant can still be naturalised even if certain of the requirements are not met, at the discretion of officials at the Home Office. There are some aspects of the requirements which are not discretionary, though.

The circumstances where officials will exercise their discretion in a person's favour are limited and are set out in the nationality policy guidance, specifically the document *Naturalisation as a British citizen by discretion*, which we consider in some detail below.

Making an application where reliance is being placed on a Home Office official exercising discretion in the applicant's favour is far from ideal. Home

Office officials are not renowned for their generosity in these matters. Bringing a legal challenge is difficult, stressful and expensive and few such challenges lead to a positive result.

Free of immigration time restrictions: ILR or permanent residence

All applicants for naturalisation should be free of immigration time restrictions on the date that they apply for naturalisation. This generally means having Indefinite Leave to Remain, or permanent residence under EU law. Having a visa that is valid for a given number of years means that the person is *not* free of immigration time restrictions and cannot naturalise.

Attempting to naturalise without first securing freedom from immigration time restrictions can lead to real problems: see *What happens if you mistakenly apply for British citizenship instead of indefinite leave to remain?* on the Free Movement blog.

Different rules apply for those married to a British citizen to those who are not:

- For spouses the requirement is that the person be free of restrictions **at the date of application**. This means that an application for naturalisation can potentially be made as soon as the person is granted Indefinite Leave to Remain (or has been issued with a permanent residence document in the case of those to whom EU law applies), assuming all the other requirements are met.
- For non-spouses the requirement is that the person be free of restrictions **for 12 months prior to the date of application**. This means a person must wait for at least 12 months from being granted Indefinite Leave to Remain or gaining permanent residence, assuming all the other requirements are met.

The precise wording of this requirement is set out in the British Nationality Act 1981 at Schedule 1:

Spouses	Non spouses
Paragraph 3(c): “that on the date of the application he was not subject under the immigration laws to any restriction on the period for which he might remain in the United Kingdom”	Paragraph 1(2)(c): “that he was not at any time in the period of twelve months so ending subject under the immigration laws to any restriction on the period for which he might remain in the United Kingdom”

The main examples of individuals in the UK who are free of immigration time restrictions are:

- holders of Indefinite Leave to Remain
- EEA nationals or family members with permanent residence

The requirement that non spouses must have been free of immigration time restrictions during the last 12 months of the five year qualifying period is a discretionary one which can be waived. This means that the Home Office can potentially naturalise a person even though the requirement is not met. However, the circumstances where the Home Office will waive the requirement are limited:

- where the ILR application was made at least 15 months prior to their citizenship application and was granted after a protracted length of time through no fault of the applicant, or
- where the 12 month period has passed by the time the application is considered (rather than received).

There are some other exceptions which can be found in the nationality policy guidance document *Naturalisation as a British citizen by discretion*, in the section “Applicants under section 6(1) who have not been free of immigration time restrictions for 12 months”.

In effect the requirement to be free of immigration restrictions extends the route to citizenship for spouses of British nationals from three years to five years, and the route for non-spouse applicants from five years to six years. This is because most immigration categories require residence of five years before ILR can be granted or permanent residence is acquired.

Examples

Karl is Norwegian and married to a British citizen. He has been resident in the UK for three years and enquires with a lawyer about applying for naturalisation. The lawyer has to explain that although the British Nationality Act 1981 seems to say that spouses of British citizens can naturalise after three years, in reality Karl will have to wait for another two years. That will give him five years of residence as an EEA national, meaning that he qualifies for permanent residence.

Monica is Italian and single. She has been resident in the UK for five years and has recently acquired a permanent residence certificate. She includes this in an application for naturalisation as a British citizen, but the application is rejected by the Home Office and her full fee is retained. What Monica has failed to realise is that she must hold permanent residence for 12 months before being able to apply for naturalisation as a non-spouse.

Praise is Nigerian and married to a British citizen. She has been resident in the UK for five years and was recently granted Indefinite Leave to Remain. Praise can now apply for naturalisation, as she is free of immigration time restrictions and is a spouse.

Wei is Chinese and single. He has been resident in the UK for five years and was recently granted Indefinite Leave to Remain. As a non spouse, Wei should wait until 12 months have passed from the date on which he was granted ILR to apply for naturalisation.

Necessity of permanent residence documents for EEA nationals

In November 2015 the Home Office changed the requirements for EEA nationals applying for naturalisation as a British citizen. Prior to that, it was

necessary merely to have acquired, in law, the right of permanent residence (as opposed to it being necessary to acquire a document evidencing acquisition of this right). It had been possible to send in evidence of that right in the form of evidence of five years of being a worker, self employed person, self sufficient or a student.

From 12 November 2015 it has been compulsory to hold a permanent residence document at the time of application for naturalisation and to submit it with the application. This change was introduced by the British Nationality (General) (Amendment No. 3) Regulations 2015 (SI 2015/1806).

Unfortunately, this required EEA nationals to run the gauntlet of the permanent residence document application process if they wish to naturalise.

Example

Cecile is a French national. She has resided in the UK since 2002 as a worker; she found a job within weeks of arriving and has worked more or less continuously ever since, with a short break of a few weeks between jobs.

She automatically acquired the right of permanent residence in 2007, five years after she entered the UK. She never applied for a permanent residence certificate because she did not need to and had no interest in naturalising as British.

Worried about the effect of the UK leaving the EU, she decides to naturalise as a British citizen. She applies for a permanent residence certificate in June 2016 and it is issued in September 2016. As soon as she had the permanent residence certificate, she was eligible to apply for naturalisation (assuming she meets the other criteria, such as good character). This is because she had a permanent residence certificate and she has had permanent residence since 2007, which is more than the required 12 months.

The importance of the permanent residence start date means that it is useful to specify in the application to the Home Office from when it is asserted the

right of permanent residence arose. For example, in the example above Cecile would explicitly say in her application for a permanent residence document that her permanent residence was acquired in 2012.

The position for EEA nationals has been further complicated as a result of the introduction of the EU Settlement Scheme. This enables them to get "settled status" (legally speaking, a form of ILR) under Appendix EU of the Immigration Rules, effectively replacing permanent residence documents. The two schemes currently run in parallel: EEA nationals can still apply for permanent residence, but it will no longer be valid after Brexit.

It is important for EEA nationals to be aware of the differences. Unlike the permanent residence document applications, EEA nationals granted settled status will not have their grant backdated and will not receive a letter stating an earlier deemed date of acquisition. This is important to bear in mind when considering the appropriate timing of an application. An EEA national granted settled status will be treated like any other non-EEA national applicant and, unless married to a British citizen, will have to wait one year from the date of grant in order to be free of restrictions for 12 months prior to the date of application.

Length of residence: spouse or civil partner of a British citizen

Time in UK before being eligible to apply

Before being eligible to apply, the spouse or civil partner of a British citizen must have spent at least three years resident in the UK (BNA 1981 Schedule 1 paragraph 3(a)). This requirement is discretionary and can be waived, but Home Office policy restricts the exercise of this discretion to the circumstances outlined in the table that follows.

Moreover, there will in fact be very few if any spouses or civil partners of British citizens who can apply as quickly as within three years of arrival in the UK. This is because of the requirement discussed above, that the applicant be free of immigration time restrictions.

Usually, it takes five years to acquire a status that is free from immigration time restrictions, whether it is Indefinite Leave to Remain, EU law permanent residence or EU settled status.

Example

Nuala is an EU citizen. She entered the UK in September 2011 and has been working ever since. She was already married to a British citizen at the time she entered the UK.

One part of the British Nationality Act 1981 seems to say that she only has to live in the UK for three years before she can apply to naturalise as British because she is the spouse of a British citizen. However, another part means that in reality she can only naturalise once she has held permanent residence for at least one year. Worse, a change in Home Office rules in November 2015 means that she has to apply for a permanent residence document before she can apply for naturalisation.

The earliest she was therefore eligible was September 2016 but she would have needed to apply for and obtain a permanent residence certificate before she could make the application, the waiting times for which are very variable.

When the Home Office is assessing absences from the UK (see below) the period considered will always be the three years leading up to the application for naturalisation, although earlier periods of residence may be relevant if there are what the Home Office calls “excess absences”. It is not possible to “nominate” some three year period in the past during which the absence criteria were met.

Overall absences from UK

During the three qualifying years immediately prior to the application for naturalisation by a spouse or civil partner of a British citizen, the applicant is only allowed to have been outside the UK for a limited amount of time. The basic rule is that the applicant must not have been outside the UK for more than a total of 270 days in total over the three year period.

There is some discretion to waive the overall residence requirement:

Absences	Home Office approach
270 to 300 days total absence	Home Office guidance suggests that absences of up to 300 days will normally be disregarded.
300 to 450 days total absence	Discretion may be exercised where the applicant has been resident for the previous four years, without substantial absences within the first of those four years (the year outside the normal qualifying period).
450 to 540 days total absence	Discretion may be exercised where the applicant has been resident in the UK for the previous five years, without substantial absences within the first two of those years (the two years outside the normal qualifying period).
300 to 540 days total absence	Discretion may be exercised to waive the requirements in the following circumstances: • absences due to posting abroad on Crown Service, • the unavoidable nature of the applicant's career (e.g. a job that requires regular travel out of the UK), or • exceptionally compelling reasons of an occupational or compassionate nature, such as a firm job offer where British citizenship is a statutory or mandatory requirement.

For any exercise of discretion where the excessive absences exceed 30 days, the Home Office policy states that the applicant must show they have "established their home, employment, family and finances in the UK".

Absences in final year

As well as not being absent for more than a total of 270 days over the three year period, the applicant must not have been absent from the UK for more than 90 days in the final year leading up to the naturalisation application.

Again, there is some discretion to waive this requirement:

Absences	Home Office approach
90 to 100 days absence in final year	Home Office guidance states that absences of up to 100 days during the final year of the qualifying period will normally be disregarded.
100 to 180 days absence in final year	Discretion may be exercised if the total number of absent days over the three year period (270) ***is not*** exceeded, and the applicant "demonstrates strong links through the presence of family, employment and their home in the UK".
100 to 180 days absence in final year	Discretion may be exercised even if the total number of absent days over the three year period (270) ***is*** exceeded if the applicant has "demonstrated that they have made this country their home by establishing a home, employment family, property and finances in the UK" *and* where the absence is justified by Crown service, or "by compelling occupational or compassionate reasons".
Over 180 days absence in final year (but not over 270 over whole three years)	Discretion may be exercised if the applicant has demonstrated that they have made the UK their home.

Absences	Home Office approach
Excess absences for final year and overall period	Discretion may be exercised only in exceptional circumstances and where the applicant has demonstrated that they have made the UK their home.

Length of residence: non spouses

Time in UK before being eligible to apply

Before being eligible to apply, a person who is not married to a British citizen must have spent at least five years resident in the UK (BNA 1981 Schedule 1 paragraph 1(2)(a)). This is a discretionary requirement which can be waived at the discretion of the Home Office, as discussed in more detail below.

The most recent year of these five must have been one in which the person was free from immigration time restrictions (BNA 1981 Schedule 1 paragraph 3(c)). This is also a discretionary requirement which can be waived at the discretion of the Home Office.

Usually, it takes five years to acquire a status that is free from immigration time restrictions, whether it is Indefinite Leave to Remain, EU law permanent residence or EU settled status. This means that the earliest most non spouses will be able to apply for naturalisation is after a total of six years of residence in the UK, consisting of five years to acquire a status free from immigration time restrictions followed by one year with that status.

There may well be additional delays over and above the six year period if it takes time to acquire the documents necessary to make the application for naturalisation, such as the ILR status papers or a permanent residence document.

Example

Pedro is an EU citizen. He arrives in the UK in September 2006 and has been working ever since. He is not married to a British citizen. He automatically acquires permanent residence in September 2011 and is therefore potentially eligible to apply for naturalisation from September 2012 onwards. He did not make an application, however, and owing to a change in the process for applying for naturalisation for EU citizens

in November 2015 he has to apply for a permanent residence certificate before he can apply for naturalisation.

Overall absences from UK

During the five qualifying years the applicant is only allowed to have been outside the UK for a limited amount of time. The basic rule is that the applicant must not have been outside the UK for more than a total of 450 days in total over the five year period.

There is some discretion to waive the overall residence requirement:

Absences	Home Office approach
450 to 480 days total absence	Home Office guidance suggests that absences of up to 480 days will normally be disregarded.
480 to 730 days total absence	Discretion may be exercised where the applicant has been resident for the previous seven years, without substantial absences within the first two of those seven years (the two years outside of the normal qualifying period).
730 to 900 days total absence	Discretion may be exercised where the applicant has been resident in the UK for the last eight years, without substantial absences within the first three of those eight years (the three years outside of the normal qualifying period).
480 to 900 days total absence	Discretion may be exercised to waive the requirements in the following circumstances: • absences due to posting abroad on Crown Service, • the unavoidable nature of the applicant's career (e.g. a job that requires regular travel out of the UK), or • exceptionally compelling reasons of an occupational or compassionate nature, such as a firm job offer where British citizenship is a statutory or mandatory requirement.

For any exercise of discretion where the excessive absences exceed 30 days, the Home Office policy states that the applicant must show they have "established their home, employment, family and finances in the UK."

Absences in final year

As well as not being absent for more than a total of 450 days over the five year period, the applicant must not have been absent from the UK for more than 90 days in the final year leading up to the naturalisation application.

Again, there is some discretion to waive this requirement:

Absences	Home Office approach
90 to 100 days absence in final year	Home Office guidance states that absences of up to 100 days during the final year of the qualifying period will normally be disregarded.
100 to 180 days absence in final year	Discretion may be exercised if the total number of absent days over the five year period (450) ***is not*** exceeded, and the applicant "demonstrates strong links through the presence of family, employment and their home in the UK".
100 to 180 days absence in final year	Discretion may be exercised even if the total number of absent days over the five year period (450) ***is*** exceeded if the applicant "demonstrated that they have made this country their home by establishing a home, employment family, property and finances in the UK" *and* where the absence is justified by crown service, or "by compelling occupational or compassionate reasons"
Over 180 days absence in final year (but not over 450 over whole five years)	Discretion may be exercised if the applicant has demonstrated that they have made the UK their home.

Absences	Home Office approach
Excess absences for final year and overall period	Discretion may be exercised only in exceptional circumstances and where the applicant has demonstrated that they have made the UK their home.

The future intentions requirement (see further below) also has to be met, which may potentially be called in to question where there are significant absences.

Physical presence in UK at start of qualifying period

In addition to this qualifying time period, there is a seemingly odd requirement that the applicant is physically present in the UK at the beginning of the relevant qualifying residence period of three or five years ending on the date of application. This is because of the wording used in BNA 1981 Schedule 1 to establish the three year period of residence:

> *that he was in the United Kingdom at the beginning of the period of three [or five] years ending with the date of the application…*

The date of application is defined in a guidance document published on 14 July 2017 as the date it is received by the appropriate receiving authority (the relevant receiving authority for applicants in Great Britain or Northern Ireland is the Home Secretary). This guidance is, at the time of writing, out of date and fails to account for the fact that the Home Office has been pushing very hard for online submission of all applications. With the recent shift of applications on to the gov.uk online platform, it would be helpful if the Home Office confirmed their position on what they deem to be the date of application. For those applying online, the date of application can likely be deemed to be the date on which the online application form is paid for, which is in line with the Immigration Rules for visa applicants.

If an applicant discovers that he or she was not present in the UK on the correct date three years prior to the date of receipt and misses it by less than

two months, there is discretion given to caseworkers to ‘re-declare’ the date of the application at the point that it actually comes to be considered by the Home Office.

The guidance makes clear, however, that there is no flexibility outside of this two month window. There are a few other (very) limited exceptions to this requirement and these are set out in the nationality guidance document *Naturalisation as a British citizen by discretion*.

Not in breach of immigration laws

Any time spent in the UK while in breach of immigration law will not count towards the qualifying residence period. Where residence in breach of immigration laws does occur, it will reset the clock and the residence period restarts once residence becomes lawful again.

What counts as a breach of immigration laws?

The official nationality guidance confirms that any person who has entered the United Kingdom but does not have leave to enter or remain is deemed, for the purposes of the British Nationality Act 1981, to be in the UK in breach of the immigration laws.

The BNA 1981 specifically and exhaustively defines “in breach of immigration laws” at section 50A as a person who is

(a) in the United Kingdom;

(b) does not have the right of abode in the United Kingdom within the meaning of section 2 of the Immigration Act 1971;

(c) does not have leave to enter or remain in the United Kingdom (whether or not the person previously had leave);

(d) does not have a qualifying Common Travel Area entitlement;

(e) *is not entitled to reside in the United Kingdom by virtue of any provision made under section 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 section 8(1) of the Immigration Act 1971 (crew) (whether or not the person was previously entitled); and*

(g) *does not have the benefit of an exemption under section 8(2) to (4) of that Act (diplomats, soldiers and other special cases) (whether or not the person previously had the benefit of an exemption).*

The Home Office guidance Naturalisation as a British citizen by discretion, helpfully sets out those who are **not** considered to be in the UK in breach of immigration law:

(a) *People with the right of abode in the UK;*

(b) *People with leave to enter or remain;*

(c) *Citizens of the Republic of Ireland who last arrived in the UK on a local journey from the Republic of Ireland;*

(d) *People who are entitled to reside in the UK without leave under EU law as extended by the European Economic Area Agreement;*

(e) *Crew of ships or aircraft;*

(f) *People who are exempt from immigration control;*

(g) *People who have disembarked at a United Kingdom port but are still in the immigration control area or have been detained or given "temporary admission" pending a formal decision on their eligibility to enter.*

In addition, where a person makes a valid and in-time immigration application their leave is extended by section 3C of the Immigration Act 1971

- until the decision is served or the application is withdrawn

- while an appeal could be brought
- while an appeal is pending

This can be a complex area of law and legal advice may be needed if there is an issue around whether section 3C leave existed or not.

When might discretion be exercised despite a breach?

As already discussed, there are some requirements for naturalisation which are set in stone and which cannot be overlooked or waived by officials even if they are sympathetic. There are some requirements which officials are empowered by the statute to waive. This is referred to as a "discretion". Residence not in breach of immigration laws is one such requirement which *can* be waived.

Officials are instructed by their guidance that discretion should only be exercised where the reasons for the breach "were clearly outside the individual's control, or if the breach was genuinely inadvertent and short".

Examples are given in the guidance to officials:

- the breach occurred at a time when the applicant was a minor whose parents failed to obtain or renew their leave
- the applicant was a victim of domestic violence whose abusive partner prevented the renewal of leave
- the applicant had made an 'in-time' application, but the application was rejected and so they became in breach
    - this is provided there is no reason to doubt that the form was submitted in good faith and a fresh application was submitted within 28 days of the rejection and before 24 November 2016
- the person had made a late application for leave to remain which was subsequently granted and either the:

    - application was not submitted more than 28 days after the expiry of their previous leave and before 24 November 2016
    - application was not submitted after more than 28 days overstaying if it was an asylum application
    - person had a period of more than 28 days between their leave expiring and them making a new application and there were exceptional circumstances such as a family illness or bereavement
    - period of overstaying ended on or after 24 November 2016 and leave was granted in accordance with paragraph 39E of the Immigration Rules
- the person arrived the UK clandestinely but either presented themself without delay to the immigration authorities or was detected by the immigration authorities shortly after arrival:
    - the maximum period involved should normally be 1 month, but may be longer if there are extenuating circumstances
    - in these cases you can waive the breach that occurred from entry until the person's first application for leave or asylum was determined, provided the application was granted
- an application for asylum or leave to remain was refused but was later acknowledged to be an incorrect decision and the appropriate leave was granted

Discretion will never be exercised by the Home Office where the breach was "both substantial and deliberate". As far as the Home Office is concerned, this includes where a person unsuccessfully attempted to apply for leave to remain in the UK then remained unlawfully, or in cases of unlawful residence leading to a grant of leave under the former 14-year rule or a concession. An exception may be made where the person was granted refugee status as a result. By extension the same approach would probably be applied to

periods of unlawful residence ending in regularisation under the private life sections of the Immigration Rules.

Example

Curtis entered the UK as a visitor and overstayed. He later applied for leave to remain on the basis of 14 years of long residence and was granted Indefinite Leave to Remain (ILR).

Although Curtis might possess ILR and have resided in the UK for more than five years, none of the residence prior to the grant of ILR will be counted by the Home Office towards his qualifying period for naturalisation. In effect, the "clock" starts from when he was granted ILR.

Curtis faces an additional problem in the shape of the good character test, discussed below. This excludes someone in Curtis's position from successfully applying for naturalisation for 10 years from the latest breach of immigration law.

The Home Office takes the view that EEA nationals physically present in the UK but who do not have a right of residence under Directive 2004/38 are resident in breach of immigration laws. This is made clear in Home Office policy document European Economic Area (EEA) and Swiss nationals: free movement rights. Page 25 sets out examples of how this approach is considered by the Home Office to work in practice:

This page provides example scenarios on when a European Economic Area (EEA) national is considered in breach of the immigration laws for the purposes of the British Nationality Act 1981 (BNA 1981).

Scenario 1

Paolo, an Italian citizen, came to the UK for employment in 1997. He voluntarily left work on 1 December 2000. No deportation or removal order was made against him, and he has remained without any right

of residence under community law [meaning EU law], and without leave, ever since. Paolo has been in the UK in breach of the immigration laws only since 7 November 2002, when section 11 of the Nationality, Immigration and Asylum Act 2002 came into force. His residence here between 1 December 2000 and 6 November 2002, although unauthorised, should not be regarded as a breach.

Scenario 2

Sabine, a French citizen, enrolled as a student in October 1990. Her course ended in June 1993. She then remained in the UK without leave and without any entitlement under community law. No deportation or removal order was made against her. In 1996 she commenced employment, and this has continued to the present day. Sabine should not be treated as having been in the UK in breach of the immigration laws at any time.

Scenario 3

Colette, a Belgian citizen, came to the UK for a holiday in August 2003 but then remained without permission or entitlement under community law. Any residence in the UK after her entitlement under community law came to an end was residence in breach of the immigration laws.

Whether the Home Office approach is correct as a matter of law is questionable. It could be argued that Articles 20 and 21 of the Treaty on the Functioning of the European Union give a right to be physically present in another Member State. However, any legal challenge is likely to be stressful and expensive; success can never be guaranteed.

FUTURE INTENTIONS

Applicants for naturalisation are expected to make Britain their home if they are granted citizenship. Unless applying on the basis of marriage or civil partnership with a British citizen, applicants must satisfy the Home Office of the following:

> *(i) his intentions are such that, in the event of a certificate of naturalisation as a British citizen being granted to him, his home or (if he has more than one) his principal home will be in the United Kingdom...*

This is known as the "future intentions" requirement. It essentially means that applicants are expected to continue to maintain their main home in the UK if they are granted citizenship. In assessing this, the Home Office will be looking to make sure that applicants do not intend to sever their ties with the UK the moment they are granted citizenship.

This requirement does not, however, apply to spouses/civil partners of British citizens, meaning that they have one less hurdle to surmount in their naturalisation application.

Detailed guidance on how the Home Office interprets the future intentions requirement is set out in the nationality policy guidance document *Naturalisation as a British citizen by discretion*.

Particular rules apply to those employed by certain international organisations, who are employed in the service of a company established in the UK, are serving abroad in Crown or other qualifying service or employment (or intend to be so) and applicants accompanying an established spouse or civil partner on a posting outside the UK. These are covered in the Home Office guidance but are not addressed here for reasons of space.

No further investigation needed

The Home Office will broadly take applicants at their word if they state that they intend to reside in the UK in the following circumstances:

- they meet the residence requirements, without the need to exercise any discretion to accept excess absences, ignoring excess absences up to 30 days
- they have an established home in the United Kingdom
- they have been, or intend to be, absent from the United Kingdom for not more than six months
- the absence was, or will be, clearly temporary (e.g. for a holiday or business travel)
- if it is an intended absence, the Home Office is satisfied they intend to return to the United Kingdom
- they have maintained an established home in the United Kingdom where any close family who have not accompanied them abroad have continued to live
- there is no information to cast doubt on their intention, for example:
  - a spouse/partner who is, or intends to become, resident abroad; or
  - a recent (or proposed) absence from the country for a period of more than six months

Where the Home Office is considering granting an application even though the applicant does not meet the residence and absence requirements, the applicant will need to show that he or she has “an established residence, family and a substantial proportion of any estate here.”

Is principal home in the UK?

Where the Home Office has doubts about intention to live in the UK because the above criteria are not met, further investigation will be conducted to determine whether:

- there is evidence of a principal residence outside the UK
- the applicant or their partner owns property abroad
- the applicant's family live abroad, either in the family home or elsewhere
- the applicant has more than one home and their principal home is abroad.

Where there is such evidence, the application would normally be refused.

Is applicant domiciled in the UK for tax purposes?

An applicant's tax domicile can be a strong indicator of future intentions. If an applicant is or appears to be domiciled abroad for tax purposes, the Home Office may contact the applicant to seek their permission to contact HMRC to answer a "domicile enquiry" questionnaire.

If the applicant refuses permission, Home Office policy demands that the application must be refused. If the applicant grants permission and a response from HMRC comes back to show non-UK tax domicile, it is likely that this will also lead to refusal unless sufficient explanatory evidence has been provided.

Spouse or partner's intentions

The fact an applicant's spouse or partner is not applying for naturalisation at the same time is not of itself considered by the Home Office evidence that the intention to live in the UK requirement is not met. However, further enquiries may be made and an application may be refused if it transpires that the spouse or partner

- is resident abroad

- plans to reside abroad, or
- the applicant spends substantial periods with their spouse or partner and children abroad

This will not cause refusal where the couple

- are separated
- the spouse or partner is seeking entry to the UK or can convince the Home Office he or she is intending to move to the UK or
- it is clear that the couple are content to live apart for the foreseeable future.

Example

Sayeed, a Pakistani citizen with a wife resident in that country, applies for naturalisation as a British citizen in May. He intends to visit Pakistan the following December and remain there for seven months, largely in a property he owns.

This will jeopardise Sayeed's application unless he can satisfy the Home Office that the Pakistan property is not his principal residence and that his wife is either taking steps to relocate to the UK, or that the couple are content to live in different countries after the seven months are up.

Intention to live outside UK in future

Where an applicant makes clear that he or she intends to live in the UK for a period but then has plans to establish their principal home abroad in future, the application will be refused.

Where an applicant is abroad or about to go abroad for six months or more an application will normally be refused, other than where

- the applicant is undertaking voluntary work such as with the Voluntary Service Overseas (VSO)

- the applicant is undertaking studies, training or employment abroad which is necessary to pursue a UK-based profession, vocation or occupation
- the absence forms part of an established pattern, such as in relation to employment at sea and the applicant is primarily based in the UK

No principal home

There are special provisions in place for those whose way of life or profession (e.g. international celebrities, actors, musicians) might mean that they are unable to maintain a principal home in a conventional sense.

The guidance suggests that consideration should be given to what tax they pay in the UK, the property they have in the country, how much time they spend in the UK other than when working in the UK and their personal connections to the UK.

GOOD CHARACTER

With very few exceptions, anybody over the age of 10 who applies for registration or naturalisation as a British citizen needs to meet the so-called “good character requirement”. This is a requirement set out in Schedule 1 of the British Nationality Act 1981. Where a person is deemed by the Home Office not to be "of good character" then his or her application for citizenship will be refused.

There is no further definition of what is meant by "good character" in the British Nationality Act 1981. However, there is guidance available from the Home Office as to what is likely to be considered behaviour that indicates a person is not "of good character”. We can also look to the very few cases that have reached the courts on this issue.

Home Office guidance: what is indicative of "bad character"?

The current guidance as to what factors the Secretary of State will consider when assessing a person’s good character is set out in nationality policy guidance document Good character requirement.

The guidance runs to 53 pages and includes a long, non-exhaustive, list of issues which would, in the Secretary of State’s view, indicate that a person is not of good character and would therefore lead to refusal.

The list includes issues which are relatively uncontroversial and to be expected, such as war crimes and terrorism. It also includes more questionable factors when it comes to deciding whether a person is of “good character”, including issues of bankruptcy and liquidation.

The sections of the guidance which cause the most concern to applicants, partly because it is not always clear when they do or do not apply, are those on deception and dishonesty and on breaches of immigration law.

Criminal convictions

Unsurprisingly, previous criminal convictions will often lead to an application for naturalisation or registration being refused on good character grounds. A series of "tariffs" or periods of exclusion from qualifying for British citizenship are set out in the guidance:

Sentence	Impact
Four years' or more imprisonment	Application will normally be refused, regardless of when the conviction occurred.
Between 12 months' and four years' imprisonment	Application will normally be refused unless 15 years have passed since the end of the sentence.
Up to 12 months' imprisonment	Applications will normally be refused unless 10 years have passed since the end of the sentence.
A non-custodial sentence or other out of court disposal that is recorded on a person's criminal record	Applications will normally be refused if the conviction occurred in the last three years

It is the entire sentence imposed on an individual which will be looked at, not the actual time spent in prison. A suspended prison sentence will be treated as a "non-custodial offence or other out of court disposal that is recorded on a person's criminal record", unless the sentence is subsequently 'activated'.

Sentences imposed overseas will normally be treated as if they had been imposed in the UK. However:

> *the decision maker has discretion to disregard a conviction for behaviour that the UK Government considers legitimate; for example homosexuality or membership of a trade union.*

The guidance also contains detailed information as to what constitutes "out of court disposals". They include cautions, warnings, community sentences, hospital orders and fines. They do not include Fixed Penalty Notices; however, these may be relevant when making the overall assessment as to whether a person is of "good character" (see below).

Example

Rebecca was convicted to three years imprisonment on 1 January 2012. She spent two years in prison only and was released for good conduct. An application to become a British citizen will be refused until 1 January 2030, that is after 15 years have passed since the end of the three year sentence (not the two years actually spent in prison by Rebecca).

Had Rebecca's sentence been suspended, it would be treated as a "non-custodial sentence or out of court disposal". Therefore Rebecca could make an application after 1 January 2015, three years after the conviction.

The table is not the be-all and end-all when it comes to assessing good character. The decision maker is expected to make an overall assessment as to the character of the applicant. This means that, in some cases, the "overall pattern of behaviour", or the harm caused by an offence:

> *may justify refusing an application, even if the sentences imposed would not normally in themselves be a reason for refusal in line with [the table above].*

The decision maker will take into account factors such as the number of convictions, the age of the applicant at the time and the time period over which those offences were committed.

In some cases, an applicant may be refused even when they have never been charged or convicted:

> *The decision maker will take into account the nature of the information and the reliability of the source. Where there is firm and convincing*

information to suggest that a person is a knowing and active participant in serious crime (e.g. drug trafficking), the application will normally be refused.

Finally, one should always remember that it is important to declare all criminal convictions, including pending ones. An applicant who fails to do so may see their application refused not only on the ground of the criminal conviction, but also on the ground of deception (see below).

Do driving and parking offences have to be declared?

The short answer is that it is important to disclose all convictions and to err on the side of caution by over- rather than under- disclosing. Where a conviction is a very minor one, such as a minor driving conviction, there is more danger from failing to disclose and being accused of deception than from refusal on good character grounds because of the conviction itself. As President Nixon found to his cost, the cover up can be worse than the crime itself.

Fixed Penalty Notices are not always technically criminal convictions. It depends how an incident was treated by the police at the time. However, we have already seen that the good character requirement for naturalisation is not just about criminal convictions, it is also about wider behaviour.

It is not completely clear from the naturalisation application form whether Fixed Penalty Notices have to be disclosed. The online application form makes no specific mention of Fixed Penalty Notices. The paper Form AN, as a note to question 3.1 ("Have you been convicted of any criminal offence in the UK or any other country?"), states:

> *You must give details of all criminal convictions. This includes road traffic offences (including all drink driving offences). Fixed Penalty Notices (such as speeding or parking tickets) do not form part of a person's criminal*

record and will not be considered in the caseworker's assessment of character unless:

- *the person has failed to pay and there were criminal proceedings as a result; or*
- *the person has received numerous fixed penalty notices.*

This does not explicitly say whether Fixed Penalty Notices need to be disclosed although it is implied. The accompanying Guide AN document is much clearer, however. At section 3 on good character it states:

> *Fixed penalty notices (such as speeding or parking tickets) must be disclosed, although will not normally be taken into account…*

Very serious road traffic offences such as drunk or dangerous driving will always count as criminal convictions and must be disclosed in an application for naturalisation.

Example

Luke's criminal record is blank. However, in the past three years, he has received nine Fixed Penalty Notices for traffic offences. He has not paid half of these notices. In addition, Luke received a verbal warning for smoking marijuana in a public park last month.

Luke's criminal record is technically blank because none of the above count as criminal convictions. However, he will still need to disclose these matters in an application for naturalisation. Failure to do so may lead to him being found to have deliberately withheld information and being refused on that basis. Disclosure, however, also risks refusal on good character grounds because the number of FPNs, Luke's disregard of some of them and his verbal warning might be taken by an official at the Home Office as evidence of poor character.

Do old or "spent" convictions have to be declared?

Under the Rehabilitation of Offenders Act 1974, some criminal convictions become "spent" after a certain period of time. This means that the offence does not have to be declared for most purposes, for example when applying for employment or insurance. The period of time before an offence varies with the seriousness of the offence.

However, criminal offences never now become spent for the purposes of immigration and nationality law. The law on rehabilitation for immigration and nationality purposes was changed by section 140 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 with effect from 1 October 2012.

This means that all convictions, including spent convictions, have to be declared in an application for naturalisation. The guidance on the good character requirement confirms this:

> *Certain immigration and nationality decisions are now exempt from section 4 of the Rehabilitation of Offenders Act 1974. This means that it does not matter whether a conviction is "spent" when assessing good character provided the application was made in England, Wales or Scotland.*

This is not the case, however, for applicants who reside in Northern Ireland. These applicants should refer to Annex D2 of the guidance. Arguably, though, even applicants who reside in Northern Ireland should declare all of their convictions, including spent ones. The form simply asks "Have you been convicted of any criminal offence in the UK or any other country?" and does not specify that only unspent convictions should be declared.

It is very important that applicants declare all their convictions, including driving offences and spent convictions, to avoid seeing their application refused on the basis of deception (see below).

War crimes, terrorism and other activities contrary to the public good

The section in the nationality policy guidance dealing with international crimes, terrorism and other non-conducive activity is now quite extensive, albeit with several sections blanked out as being unsuitable for disclosure. If you are reading this and have concerns relating to war crimes, terrorism, or other such activities, you should seek legal advice.

Where a person has engaged in activities that have or are likely to give rise to a risk to public order, the decision maker will normally refuse the application.

The guidance gives the following examples of activities giving rise to a risk to public order:

> *a. has made speeches (or similar) with the aim of inciting ethnic/racial, religious or other discriminatory violence;*
>
> *b. has caused or could reasonably incite others to commit an offence. For example, the person may have extreme views which, if expressed, could result in civil unrest and a breach of the law;*
>
> *c. has advocated violent disorder or violent overthrow of the state. This does not need to be politically motivated. For example, a known football hooligan could be regarded as a public order risk.*

In addition, any applicant who has previously been refused asylum because they were excluded from the Refugee Convention will see their application for British citizenship refused.

Financial soundness

When deciding on an applicant's good character, the Home Office may also look at their "financial soundness", which includes

- bankruptcy
- liquidation of a company of which the applicant was a director
- debt, including NHS debt;
- fraud in relation to public funds, and
- non-payment of council tax (where the person unreasonably failed to pay or committed fraud in an attempt to pay less).

Bankruptcy or liquidation will not be automatic reasons for refusal, except where fraud has occurred. In all other cases, the decision maker will look at the level of culpability of the applicant in the events which led to bankruptcy or liquidation and the timing of the bankruptcy or liquidation. In particular:

> *The decision maker will determine whether the person was reckless or irresponsible in their financial affairs leading to their bankruptcy or their company's liquidation. If so, it is likely to be reflected by a disqualification being obtained. A disqualification order or undertaking prevents a person from being a Director or taking part in the management of a limited company for a period of up to 15 years. Details of all disqualifications are on the Companies House website. Where this is the case, the decision maker will normally refuse an application.*

Similarly, debt in itself will not normally be a reason for refusal.

However, where a person deliberately and recklessly builds up debts and there is no evidence of a serious intention to pay them off, the decision maker will normally refuse the application.

Notoriety

This is a very vague head of consideration in the good character test. Curiously, the Home Office's guidance does not begin with a list of activities or features that would cause a "notorious" person to be refused on good character grounds. Instead the Home Office offer a list of things that "should not normally, of themselves, be relevant". This list includes

• divorce, separation, or other marital or domestic problems

• promiscuity or sexual preference within the law

• drinking or gambling

• eccentricity, including beliefs, appearance and lifestyle

• unemployment, working habits or other legitimate means of support

By implication however, perhaps a combination of multiple of the above features may lead to potential refusal. Generally, decision-makers appear to be looking for persistent behaviours that have led to notoriety in the local or wider community. The guidance states that

> *the scale and level of behaviour need to reflect so poorly on a person's character that the application should be refused.*

Well-known or celebrity applicants may come under this heading, as decision-makers are warned to be mindful of cases in which their decision may attract public attention or press reaction.

Deception or dishonesty

Present or past alleged deception or dishonesty by an applicant is one of the most common reasons for refusal on good character grounds. In practice, a decision maker will normally refuse an application where the applicant has used deception

- in their application for British citizenship

- in a previous immigration application; or
- in their dealings with other departments of the government, including in relation to benefits.

Where deception was used in a previous immigration application, it does not matter whether the deception was material to the grant of leave or not. Even if the deception was not relevant a later application for naturalisation will still normally be refused.

Where the deception relates to a previous immigration application, an application for British citizenship will be refused for ten years starting with the date on which that deception was discovered or admitted.

When the deception relates to the current application for citizenship any subsequent application for citizenship will be normally be refused if it is made within ten years from the date of the refusal unless the failure to disclose was unintentional and concerned a one-off non-custodial sentence or out of court disposal.

Examples

Joshua used deception in an application for further leave to remain in 2011 by knowingly relying on a false document. This deception was discovered by the Home Office in 2013. Any application for naturalisation made by Joshua will normally be refused until 2023, that is ten years after the deception was discovered.

Karina submitted an application for naturalisation in 2015. In that application, she did not declare that she was sentenced to six months imprisonment in her country of origin in 2003. The conviction itself should not be a ground for refusal, as the sentence was a period of imprisonment of less than 12 months, and more than ten years have passed since the end of the sentence. However, Karina's application will be refused as she deceived the Home Office by not declaring her sentence. Any new application which Karina submits will be refused until 2025.

Where deception is committed in an application for naturalisation or registration and is not uncovered at the time of the application, the Home Office has a power to later deprive a person of their British citizenship. This has occurred in some cases involving, for example, successful false asylum claims leading to a grant of a settlement and eventually to naturalisation.

Immigration issues

In December 2014 the Home Office introduced new guidance on good character and started to refuse naturalisation applications on the basis of poor previous immigration behaviour. This is now one of the most common reasons for refusal on the basis of good character and has morphed into a sizeable section of the good character guidance.

Under this amended guidance a decision maker will normally refuse an application if, in the ten years prior to the application, an applicant:

- Entered into a false marriage or marriage of convenience. The ten years will start running from when the deception is discovered or admitted.
- Cheated in a Knowledge of Life in the UK test, or an English language test. Again, the ten years start running when the deception is discovered or admitted.
- Was prosecuted for making a false statement in an application.
- Was complicit in deception on the part of referees.
- Failed to pay litigation debt owed to the Home Office where a court has ordered payment of costs.
- Failed to comply with immigration requirements within the previous ten years, for example accessed public funds when prohibited from doing so, worked in the UK without permission to, studied with the appropriate permission, failed to report.

- Overstayed. The policy in relation to overstaying is particularly brutal as it tracks back over a whole ten year period, looking back at a time when the immigration rules and general landscape was a lot less hostile than it is today, and a lot more forgiving towards applications from overstayers. See below for the limited exceptions.
- Entered the UK illegally. The ten-year period starts running from the date of entry if known, or otherwise the date the applicant brought themselves or came to the attention of the Home Office. There is now an exception for refugees, but it is fairly limited, so any refugees who did enter the UK illegally before successfully claiming asylum should consider taking legal advice on this point.
- Absconding. Any person on temporary admission, temporary release, bail, or a restriction order who has failed to comply with reporting conditions will normally be refused citizenship for a period of ten years from the date they last brought themselves to the attention of the Home Office since their period of absconding.
- Illegal working. Any person who has worked illegally in the previous ten years will normally be refused. This includes people lawfully in the UK but without the appropriate work permissions attached to their status, for example visitors, or students working in excess of their permitted hours.

The policy on overstaying states:

> *Where a person overstayed at some point in the 10 years prior to an application for citizenship, discretion to overlook this breach will normally only be considered if it is the sole adverse factor weighing against the person's good character; and*
>
> > • *the person's application for leave to remain was made before 24 November 2016 and within 28 days of the expiry of their previous leave, or*

> • *the person's application for leave to remain was made on or after 24 November 2016, and the application did not fall for refusal on the grounds of overstaying because an exception under paragraph 39E of the Immigration Rules applied, or*
>
> • *the period without leave was not the fault of the applicant, for example where it arose from a Home Office decision to refuse which is subsequently withdrawn or quashed or which the courts have required the Home Office to reconsider.*

The policy on absconding, as written, is also harsh. It is unclear whether a person who, say, missed one single reporting event for reasons such as illness or even mere forgetfulness, would be penalised for the subsequent ten years in the same manner as, say, a person who wilfully ignored their reporting conditions and went to ground to evade immigration control.

There is in effect a permanent exclusion from ever applying successfully for British citizenship in cases where the applicant:

- is currently, or has previously been, involved in an attempt to assist someone in the evasion of immigration control
- is or has hired illegal workers
- was deprived of their citizenship on "conducive to the public good" grounds (e.g. because they committed a serious criminal offence)

It is important to remember that, in addition to the factors listed above, the Secretary of State retains the very wide discretion to refuse an application whenever she is not satisfied that the application is of good character. The guidance confirms that:

> *If the person does not clearly fall into one of the categories outlined above but there are doubts about their character, the decision maker may still refuse the application.*

There is no specific mention of non-compliance with the Worker Registration Scheme (WRS) for A8 and A2 EU nationals in the nationality policy guidance on good character. However, there were concerns that refusals may occur on this basis in practice.

These concerns have proven unfounded, and, anecdotally at least, the authors are aware of a number of successful cases in which the applicant had worked in breach of the WRS in the ten years prior to the date of application.

Dealing with the guidance in practice

Firstly, it is important to note that the refusal of an application for British citizenship does not by itself prejudice an applicant's current immigration status or future applications for British citizenship. In other words, an applicant who submits an application for British citizenship which is refused will retain his or her current immigration status. He or she will also be free to submit a new application for British citizenship in the future, if or when he or she meets the good character requirement.

The exception to this rule is where the reason for refusal is that the applicant has used deception in the current application. In this case, any new application will be refused for a period of ten years.

In many cases it might well be that the practical advice is to wait until a person has a straightforward application. For example, in the case of a person who has overstayed, it might well be that they will want to wait until ten years have passed since the end of their period of overstay. This is especially true with individuals with limited financial means, who will be unwilling to risk spending such large amounts of money.

At the time of writing, in June 2019, an application for naturalisation costs £1,330, out of which only £80 (the administrative cost for the citizenship ceremony) will be refunded if the application is refused.

However, some potential applicants may be more willing to take risks and be willing to try submitting an application, even when it is likely that it will be refused and they will need to challenge it. Importantly, the good character requirement guidance is guidance only. None of the grounds for refusal in the guidance are mandatory as such. It is always possible to put arguments forward to rebut the presumption of refusal. In general, though, immigration lawyers are rightly pessimistic about the Home Office's willingness to depart from the "normal" position in cases which the good character guidance suggests that naturalisation should "normally" be refused.

Granting in exceptional circumstances despite poor character

According to the Home Office guidance, an application for British citizenship will only be granted in very limited circumstances when there are factors which would bring the application to normally be refused. In particular, the guidance says

> *There may be exceptional cases where a person will be granted citizenship even where they ordinarily would fall to be refused.*
>
> *Exceptions will generally fall into one of the following categories:*
>
> 1. *the person's conviction is for an offence which is not recognised in the UK and there is no comparable offence. See section 2.4 - Non-UK Convictions; or*
> 2. *the person has one single non-custodial sentence, it occurred within the first 2 years of the 3 (i.e. the person has had no offences within the last 12 months), there are strong countervailing factors which suggest the*

person is of good character in all other regards and the decision to refuse would be disproportionate.

This suggests a very strict interpretation of the guidance, which is arguably incorrect. Judges have suggested that the Secretary of State should apply the guidance in a more flexible way.

However, there is a marked difference between the theory and practice of law. Realistically, in most cases the outcome of an application for naturalisation will be whatever the Home Office decides, and the Home Office case worker deciding the application will almost always follow and apply the guidance. In some cases it may be feasible as a matter of law to bring a legal challenge by way of an application for judicial review. However, very few rejected applicants will want to go to the expense and inconvenience of pursuing a legal challenge.

Taking into account positive evidence of good character

As we have seen, the nationality policy guidance mainly guides officials as to when to refuse applications on bad character. The guidance does little or nothing to encourage officials to take into account evidence of positive good character. The only mention of a positive indicator of character is that of asylum seekers who volunteered while they awaited determination of their claim. Even then, that positive is tinged with a heavy warning about ensuring that the volunteering did not amount to illegal voluntary work.

The main case on positive evidence of good character is *Hiri v Secretary of State for the Home Department* [2014] EWHC 254 (Admin). It offers good guidance on how the Secretary of State should assess the good character of an applicant. In particular, the Administrative Court confirmed that the Secretary of State's guidance should not be applied inflexibly, and that a comprehensive assessment of the applicant's good character had to be made. At paragraph 36, the judgment reads:

> *[the Secretary of State is] entitled to adopt a policy on the way in which criminal convictions will normally be considered by her caseworkers, but it should not be applied mechanistically and inflexibly. There has to be a comprehensive assessment of each applicant's character, as an individual, which involves an exercise of judgment, not just ticking boxes on a form.*

In order for the Secretary of State or her officials to consider evidence of good character, that evidence must be submitted in the first place. There is no encouragement in the application forms or any of the guidance to submit positive evidence of good character such as evidence of voluntary or charity work, achievements, character references or similar. Normally there is no need to submit anything of this nature, but if you are worried about a refusal on bad character grounds and you want officials to consider such evidence then you need to submit it. There is no duty on officials to search for evidence that might assist an applicant.

On a practical note, it will not be possible to bring a legal case claiming that officials have failed to consider evidence of good character if that evidence was not actually submitted to those officials.

See also *R (on the application of SA) v Secretary of State for the Home Department* [2015] EWHC 1611 (Admin) on the need for a holistic approach to the assessment of good character in the context of a child. The case is analysed on Free Movement here: *Refusal of a child's British citizenship application on character grounds overturned*.

Who does not need to meet the good character requirement?

Finally, it is worth remembering that two categories of individuals are exempt from meeting the good character requirement. They are

- individuals who apply under the statelessness provisions in Schedule 2 of the BNA 1981, which is directed at those who would otherwise be left stateless
- individuals who apply under section 4B of the Act, which is directed at those who have no other citizenship.

Following the Supreme Court decision in *R (on the application of Johnson) v Secretary of State for the Home Department* [2016] UKSC 56 an individual who would automatically have been born British before 1 July 2006 but for the fact his or her parents were unmarried and it was his father rather than his mother who was British is also exempt from the good character requirement. The Supreme Court held that those who had been denied British citizenship by this historic legislative bias were entitled to register as British even if they were of bad character.

This judgment has been accepted by the government but not yet incorporated into law. It is expected to also extend to applicants under section 4C (those who were born abroad before 1 January 1983 to British mothers).

KNOWLEDGE OF LIFE AND LANGUAGE IN THE UK

Applicants for naturalisation need to satisfy the "knowledge of language and life in the UK requirement". Applicants therefore need to:

1. Pass the Life in the UK Test
2. Prove their knowledge of the English language

The knowledge of English language is a separate requirement: passing the Life in the UK Test does not count as proof of knowledge of the English language.

Life in the UK test

The Life in the UK test is based on the information contained in the official Home Office's handbook called *Life in the United Kingdom: A Guide for New Residents*. Applicants are strongly advised to read the official guide carefully as the questions on the test are hardly common knowledge.

It can be purchased online directly from The Stationary Office, the official source, or at most good bookshops or even Amazon.

An official online practice test is also available from The Stationary Office here.

Other related official publications are also available for purchase:

- Life in the United Kingdom: Official Practice Questions and Answers Book
- Life in the United Kingdom Official Study Guide
- A Practical Guide to Living in the United Kingdom

The first two of these, particularly the practice questions, may well be helpful. The Practical Guide is all very interesting but is not relevant to the test itself.

All are available as hard copies in normal book format but also as downloadable pdfs and ebooks, as an audio CD and as an audio download.

A number of commercial websites have been set up to assist with learning the material necessary for the test. Whether help is needed is for the person sitting the test to decide.

Subjects covered in the test

The Life in the UK handbook covers the following topics:

- The countries which make up the UK
- Historical events and people that have helped to shape the UK, starting with “early Britain” then covering the Middle Ages, the Tudors and Stewarts, the British Empire period, the 20th century and post war Britain.
- Aspects of life in the UK today, such as religion, customs and traditions, sport, arts and culture, leisure and places of interest.
- The UK’s democratic system of government and the role of the individual in the wider community, including the development of British democracy, the British constitution, the government, the UK and international institutions, respecting the law, fundamental principles and the individual’s role in the community.

There are 161 pages in the book and it covers a lot of ground. The author managed to pass a test at first sitting but had the benefit of a university level education in history and a qualification in law. And the author still dropped a mark by accidentally filling in the answer incorrectly for one question.

Style of questions

The test is in a multiple choice questions format. There are 24 questions and applicants have 45 minutes to complete the test. Applicants need to score 75% or more to pass.

Exam technique is important: it is crucial to read and understand the questions and the answers. The questions are not written in “trick” style to try and catch people out.

The questions generally take one of the following three formats.

1. Multiple choice where a question is asked and then the examinee has to tick one or more of the options below. Sometimes the question asks for just one option to be selected, sometimes more than one.

For example, just **one option** is to be selected here:

St Andrew is the patron saint of which country of the UK?

☐ *England*

☐ *Scotland*

☐ *Wales*

☐ *Northern Ireland*

Or, a variation on this where **two options** have to be selected:

Which TWO festivals or traditions are held in November each year?

☐ *Father’s Day*

☐ *Valentine’s Day*

☐ *Remembrance Day*

☐ *Bonfire Night*

2. True/false is another style of question, such as:

Is the statement below TRUE ☐ or FALSE ☐?

Most people in the UK live in the countryside.

3. Either/or style questions are also asked, such as:

Which of the following statements is correct?

☐ *The UK is a member of NATO*

☐ *The UK has never been a member of NATO*

Practicalities

The test costs £50. Applicants can sit the test as many times as they want, although they need to wait seven days between one attempt and the next.

Applicants are given a "pass notification letter" on the day, which must be sent with the application for naturalisation.

Note that many applicants will have already passed this test when applying for Indefinite Leave to Remain. These individuals need not pass the test again, however they should re-submit the pass notification letter with the application.

Knowledge of English

Applicants who met this requirement for their application for Indefinite Leave to Remain after 28 October 2013 do not need to demonstrate it again.

For all others, the requirement can be satisfied by one of the following three methods.

Being a national of a majority English speaking country

Nationals of the following countries will automatically satisfy the knowledge of English requirement (but will still need to pass the Life in the UK Test):

- Antigua and Barbuda
- Australia
- The Bahamas
- Barbados
- Belize

- Canada
- Dominica
- Grenada
- Guyana
- Jamaica
- New Zealand
- Republic of Ireland
- St Kitts and Nevis
- St Lucia
- St Vincent and the Grenadines
- Trinidad and Tobago
- USA

Passing a specified speaking and listening qualification

The qualification must be in speaking and listening in English at level B1 of the Common European Framework of Reference for Languages (CEFR).

The test must be one of those in the Home Office's list of recognised tests and have been taken at an approved test centre.

The list of recognised tests can be found here.

Having a degree taught in English

Applicants who have a university degree (Bachelor's, Master's or PhD) can rely on their degree provided that either:

(a) It was obtained in a UK university; or

(b) It is deemed by UK NARIC to meet the recognised standard of a Bachelor's or Master's degree or PhD in the United Kingdom and either

(i) UK NARIC has confirmed that the qualification was taught or researched in English or

(ii) the qualification was taught or researched in the UK or a majority English speaking country. The list of majority English speaking country is the same as the one above, except for Canada.

Who does not need to show knowledge of language and life in the UK?

Applicants are exempt from showing knowledge of language and life in the UK if they:

- are under 18 or over 65 or
- have a long-term physical or mental condition

Applicants who have a long-term physical or mental condition preventing them from passing the test must provide evidence from a medical professional. They can either complete a form to submit with their application, available to download here, or provide a letter from a doctor confirming their physical or mental condition.

This condition must prevent an applicant permanently from meeting this requirement. Temporary illnesses are not normally grounds for exemption. Nor are illiteracy and dyslexia.

APPLICATION PROCESS

Applicants must submit their application online to the Home Office, pay the fee, and then book an appointment for biometric enrolment and document scanning at a UK Visas and Citizenship Application Services (UKVCAS) centre. Supporting documents can optionally be self-uploaded to UKVCAS, but originals will still have to be taken to the appointment for checking. Originals will be handed back to the applicant at the end of their appointment.

It's important to remember that this appointment is not with an immigration officer or representative of the Home Office, rather it is with an administrator employed by Sopra Steria. Sopra Steria is the "commercial partner" engaged by the Home Office to deliver biometric enrolment and document digitisation. There will be no Home Office representatives at the appointment and supporting documents are just being scanned, not assessed.

Sending in Form AN by post still remains an option though the Home Office now strongly discourages this. The correct address to which to send the application can be found on Guide AN.

Applicants must provide declarations signed by two referees who should have known the applicant personally for three years.

One referee should be a person of any nationality who has a professional standing; and the second referee should be the holder of a British citizen passport and either a professional person, or over the age of 25.

A list of acceptable professional persons can be found in nationality policy document General information: all British nationals.

In addition, referees must not be:

- related to the applicant
- related to the other referee

- the applicant's solicitor representing him or her with the application
- employed by the Home Office
- persons who have been convicted of an imprisonable offence during the ten years prior to the application

The applicant must also attach one passport-size photograph of themselves to the space provided on the declaration form. The applicant should write their name and date of birth on the back of the photograph.

When signing the referees are also asked to declare that the picture provided is a true likeness of the applicant.

The referee declaration forms rather annoyingly do not include space for the referee to enter his or her personal details. Instead, the referee needs to provide personal information to the applicant who must then input that information during the online application form completion. The applicant will need to give the following referee details:

- Title
- Given names
- Surname
- Gender
- Date of birth
- Address history for previous 3 years
- Phone number
- Email address
- Profession
- Nationality
- Passport number
- How does the referee know the applicant?

Fee

As of April 2019, the fee for an application for naturalisation is £1,330, which includes an £80 fee for the citizenship ceremony. In addition, an applicant will have to pay £19.20 for biometric enrolment, bringing the total to £1,349.20.

In addition to the form and the fee, all applicants should provide:

- **An identity document**: the most common are passports, European national identity cards and Home Office travel documents. However, the following may also be accepted when the above are not available for a very good reason:
  - Birth certificate
  - Photo driving licence
  - A bank, building society or credit card statement issued to you within the last 6 months

  If an applicant used one of the above documents to pass the Knowledge of Life in the UK test, this is the document which should be submitted with the application.
- **Evidence of freedom from immigration time restrictions such as:**
  - Passport with an Indefinite Leave to Remain stamp
  - Biometric Residence Permit confirming Indefinite Leave
  - Permanent residence card or document certifying their right to permanent residence for EEA nationals and their family members
- **Evidence of lawful residence** during the five (or, if the applicant is married to or in civil partnership to a British citizen, three) years before the date of the application in the form of:
  - Passports covering three or five years

- If unable to submit the above, or if the passport is not stamped when entering the UK (e.g. European nationals or those with a right of abode), letters from employers, educational establishments or other government departments indicating the applicant's presence in the United Kingdom during the relevant period

- **Applicants applying as the spouses or civil partners of British citizens** should submit:
  - A full copy of their spouse's or civil partner's British passport or naturalisation certificate
  - Marriage or civil partnership certificate
- **Life in the UK Test** pass notification letter (or evidence from a medical professional that the applicant should be exempt on grounds of poor physical or mental health)
- **Evidence of knowledge of language in the UK** in the form of one of the following:
  1. A Home Office approved qualification at level B1 or above
  2. Original degree certificate issued by a UK university
  3. If the applicant has a degree that was taught or researched in a majority English-speaking country (excluding Canada) they must provide:
     - their degree certificate, and
     - an Academic Qualification Level Statement (AQUALS) from UK NARIC confirming the qualification is equivalent to a UK qualification
  4. If the applicant has a degree that was taught or researched in a non-majority English-speaking country they must provide:
     - their degree certificate, and

- an Academic Qualification Level Statement (AQUAL) from UK NARIC confirming the qualification is equivalent to a UK qualification, and
- an English language Proficiency Statement (ELPS) from UK NARIC, which will confirm that the degree was taught in English

5. A passport showing that the applicant is a national of a majority English speaking country; or
6. Evidence from a medical professional that the applicant should be exempt on grounds of poor physical or mental health

- **Most recent P60 certificate** or if self-employed, HMRC self-assessment and statement of account for most recent tax year

What happens once the application is submitted?

Once the applicant has enrolled their biometric information and had their supporting documents scanned/checked at their UKVCAS appointment, their application will be passed to the Home Office for consideration. A decision is usually made within six months.

If the application is successful, the applicant will receive two letters. The first letter simply confirms the success of the application, and is accompanied by any original documents submitted with the application, with the exception of the Life in the UK Test certificate, which is retained by the Home Office. The second letter is a “citizenship ceremony invitation letter” (see below for more details). These letters will arrive separately.

If the application is refused, the applicant will receive a refusal letter containing the reasons for refusal, along with all their original documents. The application fee is not refunded with the exception of the £80 citizenship ceremony fee.

Returning a Biometric Residence Permit

Biometric Residence Permit holders must return their Biometric Residence Permit to the Home Office within five working days of their citizenship ceremony. This must be returned to:

Naturalisation BRP Returns
PO Box 195
Bristol
BS20 1BT

Those who fail to do so are liable to a fine of £1,000.

Oath and citizenship ceremony

Successful applicants will receive a citizenship ceremony invitation letter, containing the details of the local authority where their ceremony will take place.

They will need to contact that local authority within 21 days of the date of the invitation letter to book a place at a citizenship ceremony. They must take the original invitation letter with them to the ceremony. The ceremony must normally take place within 90 days of the invitation letter.

Usually, two guests are allowed, although this should be checked with each local authority. It is also possible to ask for a private ceremony.

During the ceremony, applicants will need to make an oath of allegiance or an affirmation (for those would do not want to swear by God) and a pledge. By doing so, applicants promise to respect the laws of the United Kingdom. It is only at that point that they become British citizens, meaning that the ceremony is a mandatory part of the process of becoming a British citizen.

At the end of the ceremony, applicants are given their Certificate of British Naturalisation. This is the document which confirms that they are British citizens, and can be used to make a subsequent application for a British passport.

Bringing a legal challenge

The refusal rate for applications for naturalisation is relatively low. It is currently around 6%.

Sometimes applications are refused "correctly" in legal terms. The applicant does not meet the criteria, for example having been outside the UK for too long but not having realised this, or not holding a permanent residence document when one was needed. If there is a legal discretion available to officials then in some cases it may be worth attempting a fresh application with better evidence or submissions. This depends on the reason for the refusal.

Examples

Anita applies for naturalisation and is refused because she was outside the UK for 112 days in the final year before she applied for naturalisation. There is a discretion enabling officials to waive this requirement in certain circumstances. Because Anita did not realise that she had a potential problem with excess absences, she did not include any extra evidence which might have persuaded officials to grant her application despite the issue. Anita could potentially re-apply, this time including evidence and submissions about her links to the UK.

Bertram applies for naturalisation and is refused on good character grounds. He entered the UK illegally eight years ago but otherwise meets the requirements for naturalisation. There is very little point in Bertram re-applying because it is highly unlikely that officials at the Home Office will change their mind on an issue like this one.

Where the requirement under which the application was refused was a mandatory one in legal terms, and officials have no discretion to waive the requirement, then the applicant will simply have to wait until he or she qualifies, if ever.

Sometimes mistakes are made at the Home Office. If an official has made a simple mistake and this can be pointed out, usually the best way forward is to apply for reconsideration, as discussed below.

Apply for reconsideration

The form to use for a reconsideration request is Form NR. At the time of writing the fee was £372.

An application for reconsideration is most likely to be worthwhile where it can clearly and incontrovertibly be shown that the Home Office has made a mistake. For example, if the Home Office has incorrectly calculated absences abroad or has failed to apply one of its own policies at all, then reconsideration may sometimes be effective. It is much cheaper and less stressful than the alternative, which is an application for judicial review.

An application for reconsideration is unlikely to succeed where a challenge is made to a discretionary decision by a Home Office official, such as refusing to waive excess absences or refusal on good character grounds. Disagreeing with the decision is not a good ground for reconsideration; for reconsideration to be worth trying there needs to have been a provable mistake by the official deciding the application.

Application for judicial review

There is no right of appeal to the immigration tribunal against a refusal of registration or naturalisation as a British citizen so the only legal remedy is an application for judicial review. It may in some cases be worth asking for reconsideration first, particularly where there is a good argument the official who decided the case the first time made a mistake, for example ignoring the policy on refugees and illegal entry.

Applications for judicial review are beyond the scope of this guide. There is an absolute deadline of three months from the refusal decision which will

only be extended in very rare circumstances. The first step is usually to comply with the Pre Action Protocol For Judicial Review by sending a letter to the Home Office warning them of proposed legal action and setting out in summary the basis for the legal action. A template is available from the Home Office but use of the template is not mandatory.

If an application for judicial review is successful, the end result is that the decision is declared unlawful and that decision has to be taken again by the Home Office. This does not guarantee that the new decision will be a favourable one, although in most cases the Home Office will usually reverse their position and grant the application made.

Conclusion

For most people, an application for naturalisation as a British citizen is something they can successfully complete on their own. The Home Office provides not just the necessary form (now usually online) but also several detailed guidance documents to help with completing the application. Many of the Home Office policies that guide officials on how to deal with different issues are also publicly available, if you know where to look.

Most applications are fairly straightforward once the supporting documents have been collected together.

A mistake can be very expensive, however, as the fee is non-refundable, and there are some people whose situation is not simple.

I hope this ebook has been a help if you have been researching your position. If you have any questions or need help with your application, appeal or application for judicial review then we can offer assistance via the Free Movement blog. In particular, we offer 30 minute slots of video link advice for £99 where you can ask us anything and we also offer a naturalisation application checking service starting at £249.

I am always delighted to hear success stories in particular, so do get in touch or leave a review if you find the ebook helpful.