

Naturalising as a British citizen



Guide to applying for naturalisation

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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 2016 just shy of 150,000 foreign nationals naturalised as British citizens. This was an increase on the numbers in 2015 but lower than in some previous years. 8% of applications were rejected, the majority because of failure to meet the “good character” requirement. The other main reasons for refusal were failure to meet the residence requirements and delays in responding to enquiries from the Home Office.

Of those naturalising in 2016 the largest groups in terms of previous citizenship were Indians (16% of the total), Pakistanis (11%), Nigerians (7%), and South Africans (3%). Only 12% of grants were to EU nationals, though applications from EU nationals were at their highest ever, presumably because of the uncertainty caused by Brexit.

This ebook is intended to guide applicants for naturalisation through 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 Conor James McKinney for his editing suggestions and to Nath Gbikpi and Nick Nason for assisting with research. 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.

A handwritten signature in black ink, appearing to read 'Colin Yeo', with a stylized flourish at the end.

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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 paid for and is normally made on a specific application form which can be downloaded free of charge from gov.uk, Form AN.

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 and disapply 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 judgment to decide whether the criterion is satisfied or not. This is true of the “good character” and “intention to settle” tests. These *must* be met for a person to be naturalised as a British citizen but judgment 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 the nationality policy guidance, until 2017 referred to as the “Nationality Instructions”. These are mainly publicly available on the gov.uk website.

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