



Home Office

# Nationality policy: Naturalisation as a British citizen by discretion

Version 14.0

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# About this guidance

This guidance tells Home Office staff how to consider applications for naturalisation as a British citizen.

## Contacts

If you have any questions about the guidance and your line manager or senior caseworker cannot help you or you think that the guidance has factual errors, then email the Nationality Policy team.

If you notice any formatting errors in this guidance (broken links, spelling mistakes and so on) or have any comments about the layout or navigability of the guidance then you can email the Guidance Rules and Forms team.

## Publication

Below is information on when this version of the guidance was published:

- version **14.0**
- published for Home Office staff on **10 August 2023**

## Changes from last version of this guidance

Information inserted at the beginning of section 'Requirements to naturalise as a British citizen' to clarify the Home Secretary's power and discretion to grant or refuse naturalisation under section 6 of the British Nationality Act 1981.

### Related content

[Contents](#)

# Requirements to naturalise as a British citizen

Naturalisation is at the discretion of the Home Secretary. Under s.6 of the British Nationality Act 1981, they may, if they think fit, grant a certificate of naturalisation to a person of full age and capacity if they are satisfied that person meets the requirements set out in Schedule 1 to the Act. They can therefore refuse to grant a certificate to a person who meets these requirements, but they cannot grant a certificate to a person who does not meet them. The Home Secretary may, in particular, refuse to grant a certificate where the applicant meets the statutory requirements, but it would not be in the public interest to grant citizenship. For example, they may decide to refuse an application where granting it could have an adverse impact on international relations. In such cases, a submission should be made to the Home Secretary, including advice from FCDO Ministers.

This section tells you about the specific requirements an applicant must meet in order to naturalise as a British citizen. The general requirements as to fees, the oath and pledge and biometric enrolment are covered in cross-cutting guidance.

The requirements which an individual must meet vary slightly based on whether they are married to, or in a civil partnership with, a British citizen. Where they are married to, or in a civil partnership with a British citizen, they must meet the requirements of [section 6\(2\) of the British Nationality Act 1981](#), anyone else is required to meet the requirements of [section 6\(1\) of the British Nationality Act 1981](#).

## Section 6(1) applications: applicant is not married to, or in a civil partnership with, a British citizen

A person may be granted a certificate of naturalisation under [section 6 \(1\) of the British Nationality Act](#) if, the applicant:

- is at least 18 years old
- is of full capacity
- meets the [residence requirements](#) or is serving outside the UK in [Crown Service](#) under the government of the UK
- is of good character
- has sufficient knowledge of English, Welsh or Scottish Gaelic language, and can provide the required evidence to support this
- has sufficient knowledge of life in the UK and provides the required evidence to support this
- if successful, intends to have their [main home in the UK](#) or enter into or continue in any of the following:
  - [Crown service](#) under the government of the UK
  - service under an [international organisation](#) of which the UK or the UK government is a member
  - service in the employment of a [company or association established](#) in the UK

A person will not be eligible for naturalisation under this section if they meet the criteria for the [citizenship ban](#).

## **Applicant is married to, or in a civil partnership with, a British citizen**

A person may be granted a certificate of naturalisation under [section 6\(2\) of the British Nationality Act](#) if the applicant:

- is at least 18 years old
- is of full capacity
- is married to, or is in a civil partnership with, a British citizen
- meets the [residence requirements](#)
- is of good character
- has a sufficient knowledge of:
  - English, Welsh or Scottish Gaelic language and can provide the required evidence to support this
  - life in the UK and can provide the required evidence to support this

A person will not be eligible for naturalisation under this section if they meet the criteria for the [citizenship ban](#).

In addition to this in some cases it may be appropriate to exempt a person from the language and knowledge of life requirements.

### **Related content**

[Contents](#)

# Children included in applications

This section provides guidance on how to treat applications for naturalisation on behalf of a child.

Children under the age of 18 cannot be naturalised. Where a child is included on an application you must consider whether they are already a British citizen or can be registered as a British citizen either because they have an entitlement or at the discretion of the Home Secretary.

Where a child included on an application has an automatic claim to British citizenship you must inform them of this in writing.

For further guidance on how to consider applications from children see Registration as a British citizen: children guidance.

## **Related content**

[Contents](#)

# Considering an application

This section provides guidance on what to consider when processing an application.

## Checking an application

You must not grant a certificate of naturalisation to a person who is already a British citizen. Where a person has an entitlement to British citizenship under another provision of the British Nationality Act 1981, you should make them aware of it before proceeding with the naturalisation application.

## Checking for automatic claims

If there is nothing in the papers to suggest that the applicant is already a British citizen, you do not need to investigate this further.

Where an applicant has an automatic claim to British citizenship you should write to them informing them of the position, explaining that naturalisation is therefore not necessary. You must also arrange for the fee to be refunded.

## Checking for entitlements

If the applicant is not already a British citizen, they may still have an entitlement to be registered as a British citizen under:

- [section 1\(4\)](#), if born in the UK on or after 1 January 1983
- [section 4](#), if a British overseas territories citizen, a British National (Overseas), a British Overseas citizen, a British subject under the act or a British protected person
- [section 4B](#), if a British Overseas citizen, a British subject under the act or a British protected person
- [section 4C](#) if born before 1983 to a Citizen of the UK and Colonies (CUKC) mother
- [section 4K](#), if they have an entitlement to register as a British overseas territories citizen under sections 17A, 17C -17F or 17H
- [section 5](#), if a British overseas territories citizen by connection with Gibraltar
- [section 10](#), if the applicant was a CUKC who renounced that status before 1 January 1983
- [section 13](#), if the applicant was a British citizen who renounced that status
- [paragraph 3 of schedule 2](#), if born stateless in the UK or a British overseas territory on or after 1 January 1983
- [paragraph 4 of schedule 2](#), if born stateless outside the UK and the British overseas territories on or after 1 January 1983
- [paragraph 5 of schedule 2](#), if born stateless before 1 January 1983

If the applicant is entitled to registration as a British citizen, you must write to the applicant explaining this and if appropriate that the excess fee will be refunded.

## **Related content**

### [Contents](#)

Registration as a British citizen: children of British parents

Registration as British citizen: children

Registration as British citizen: other British nationals

Registration as British citizen: following renunciation

Registration as British citizen: stateless persons

# Full capacity requirement

This section tells you how to assess whether an applicant satisfies the full capacity requirement.

Full capacity is defined in [section 50\(11\) of the British Nationality Act 1981](#) as being 'not of unsound mind'. It is not further defined in the act, but the requirement can be regarded as having been satisfied if the standard set out below is met.

## Required standard

The requirement is not intended to deny British nationality to individuals who have a disability which makes it difficult for them to communicate. The requirement is specifically to ensure that applicants can comprehend their actions in applying for citizenship. You must therefore be careful not to refuse someone on the basis that they cannot communicate as the result of a disability.

Whilst applicants must understand the purpose of their application, they do not need to have a comprehensive understanding of nationality or citizenship, or the procedures involved. Applicants must be of sufficiently sound mind to know before applying that they want to acquire British citizenship. Before granting an application, you must ensure that there is no reason to doubt that that level of understanding is present or capable of being restored.

[Section 44A of the British Nationality Act 1981](#) allows for the full capacity requirement to be waived where it is in the best interests of the individual.

## Assessing the requirement

Most applicants will meet this requirement and therefore you must always consider an application from the position that the requirement is met unless there is something to suggest otherwise, such as a report from a referee or doctor. Where there is reason to question the applicant's capacity you must make further enquiries with the applicant and referee where appropriate.

## Waiving the full capacity requirement

If it appears that the applicant may have a mental health condition or disability or is receiving treatment in any establishment for people with mental health conditions or learning disabilities, you must not refuse the application solely on this basis. Where there is information which could cast doubt on whether the requirement has been met, you must give applicants or their appropriate representative the option of submitting, at their cost, a report from their doctors or from a person professionally responsible for their care or welfare. You must explain both the full capacity requirement and the Home Office interpretation of it inviting as much information as possible to help reach a decision on the application.

In cases where the applicant cannot be considered of full capacity you must consider whether it would be in their best interests to waive the requirement. It will normally be appropriate to take account of all the following:

- the views of the applicant, to the extent that they can express them
- the views of any person, professional or otherwise, who has assumed responsibility for the applicant's welfare
- the citizenship status of other family members, especially those with whom the applicant resides or is in regular contact

The decision whether to waive the full capacity requirement should be taken by a Senior Caseworker.

## Waiving the oath and pledge

Where the requirement to be 'of full capacity' has already been waived, it will be usual to also waive the requirements to make the oath and pledge and to do so at a citizenship ceremony. However, you must invite the views of any professionals or family responsible for the individual's care. Where there is a desire for the applicant to attend a citizenship ceremony, such as where they are part of a family group of applicants, it should be possible to accommodate this. Such requests will, in most instances, be dealt with by the Citizenship Ceremonies Support team following discussion with the relevant local authority.

### Related content

[Contents](#)

# Residence requirements

This section tells you how to consider if an applicant meets the residence requirement for naturalisation.

In order to qualify for naturalisation as a British citizen, an individual is required to demonstrate close links with, and a commitment to the UK. As part of this the expectation is that applicants should meet the residence requirements.

Whilst there is some discretion to waive some of these requirements, this cannot be done to the extent that the requirements are ignored.

## Residence requirements: section 6(1)

The residence requirements which someone applying under [section 6\(1\) of the British Nationality Act 1981 must meet](#) are that the applicant was:

- in the UK at the beginning of the period of 5 years ending with the date of the application
- not absent from the UK for more than:
  - 450 days in that 5-year period
  - 90 days in the period of 12 months ending with the date of application
- not, on the date of application, subject under the immigration laws to any restriction on the period of stay in the UK
- not, at any other time in the 12-month period ending with date of application, subject under the immigration laws to any restriction on their period of stay in the UK
- not at any time in the period of 5 years ending with the date of application, in the UK in breach of the immigration laws - however, a person can be treated as meeting this requirement without further enquiries if they hold indefinite leave to enter or remain in the UK

There is discretion to waive the residence requirements except that the applicant must be free from time restrictions under immigration law at the time of their application

## Residence requirements: 6(2)

The residence requirements which someone applying under [section 6\(2\) of the British Nationality Act 1981 must meet](#) are that the applicant was:

- in the UK at the beginning of the period of 3 years ending with the date of application
- not absent from the UK for more than:
  - 270 days in that 3-year period
  - 90 days in the period of 12 months ending with the date of application
- not, on the date of the application subject under the immigration laws to any restriction on their period of stay in the UK

- not, at any time in the period of 3 years ending with the date of application in breach of immigration laws - however, a person can be treated as meeting this requirement without further enquiries if they hold indefinite leave to enter or remain in the UK

There is discretion to waive the residence for applications under [section 6\(2\) of the British Nationality Act 1981](#) with the exception of the requirement that the applicant must be free from time restrictions under immigration law at the time of their application.

## Considering the residence requirements

In assessing whether an individual meets the residence requirements you must consider the following aspects:

- [presence in the UK at the start of the qualifying period](#)
- absences:
  - [absences during the qualifying period](#)
  - [absences in the final year](#)
  - [technical absences](#)
- spouses or civil partners of British citizens in Crown or designated services
- immigration law:
  - [free from condition on period of time in UK](#)
  - [breaches of immigration law in the qualifying period](#)

## Presence in the UK at the start of the qualifying period

There are certain people who do not need to have been in the UK at the start of the 5-year qualifying period. These are:

- applicants who are applying only on the grounds of Crown service
- spouses or civil partners of British citizens in Crown or designated service overseas
- [applicants who are technically absent from the UK](#)

All other applicants must have been physically present in the UK on the first day of the qualifying period. There is discretion to waive this requirement (see [section on discretion](#)).

## In the UK at the start of the qualifying period

In most cases, we expect applicants to have been in the UK on day 1 of the qualifying period as this means they have completed the full 5 (or 3) years in the UK as required. However, there is discretion to waive this requirement in special circumstances.

To identify the start of the qualifying period you use the day after the application date minus the length of the qualifying period. For example in an application under [section](#)

[6\(1\)](#) made on 1 September 2022, the applicant must have been legally in the UK on 2 September 2017.

## Discretion over an applicant's presence in the UK at the start of the qualifying period in exceptional cases

There may be special reasons, such as those relating to the applicant's health, that prevented them from being in the UK at the start of the qualifying period. The Nationality and Borders Act 2022 introduced the power to treat the applicant as having fulfilled this requirement in the special circumstances of a particular case even though they were not in the UK at the beginning of the residential period.

Discretion to treat the requirement to have been in the UK on the first day of the residential qualifying period as fulfilled should normally be exercised if one or more of the following is met:

- the applicant was prevented from being in the UK because they had been removed from the UK, and the decision to remove them was later overturned
- the applicant was incorrectly prevented from resuming permanent residence in the UK following an absence
- the applicant is normally resident in the UK but there were exceptional reasons why they could not return from abroad at that time, such as illness, or travel restrictions due to a pandemic
- the applicant is a current or former member of the armed forces (see the [section on armed forces applicants](#))

If you propose to exercise discretion, you should see appropriate evidence demonstrating why the applicant was unable to be present at the start of the qualifying period. For example, if this is based on health grounds, you should see relevant medical evidence.

## Cases where the requirement can be met by the date of consideration

Applicants are expected to meet this requirement, but there may be cases where the person has inadvertently applied on a date when they did not. The application form will ask applicants to agree that the Home Office use a different date as the date of application, if this would work to their advantage.

If there has been a fee change between the original application date and the date that they can now meet the requirement (to have been in the UK at the start of the qualifying period), they must pay the fee in force at the time of the new application date.

Changing the application date in this way may be appropriate for applicants who did not meet the requirement to have been in the UK at the start of the qualifying period but meet the requirement by the time you consider their application. When you consider the application, you must assess whether the person would meet this

requirement (and the other residence requirements) on either the date you are considering the application, or a date between their original application and consideration. If a person does not meet the requirements on the date of consideration, but will do so within the next two months, it may be appropriate to put the application on hold. If the person will not meet the requirement for some time, you must consider whether there are exceptional grounds to exercise discretion (see [section on discretion](#)).

## Absences

You must check the available evidence to see whether an applicant meets the residence requirements.

The following can be used as evidence of residence:

- passports or travel documents which have been stamped to show arrival in the UK and entry and departure from other countries: these should be checked against the list of absences that applicants are asked to provide on the application form
- Home Office records
- if the applicant does not have passports to cover the qualifying period, other evidence such as employers' letters or tax and National Insurance letters:
  - in such cases you should assess whether there is sufficient evidence to show that that applicant has been resident in the UK during the qualifying period, giving them the benefit of any doubt where claimed absences are within the limits we would normally allow and there are no grounds to doubt the accuracy of the claim

You must not normally accept doctors' letters on their own as proof of residence. However, if nothing else is available and the doctors can confirm that they have seen the applicant on a regular basis during the period concerned these may be accepted.

If there are gaps in a person's evidence of residence and it is clear from the information available that they could not have travelled, you must accept this. Examples of this might include a refugee who has no means of travel or where immigration records confirm continuous residence.

You must only count whole days' absences from the UK. You must not count the dates of departure and arrival as absences. For example, a person who left the UK on 22 September and returned on 23 September will not be classed as having been absent from the UK.

An applicant only needs to have been physically present in the UK for the purpose of the act. They do not have to have been ordinarily resident or domiciled here.

## Absences during the qualifying period

Where an applicant has spent more than the 450 days for [section 6\(1\) applications](#), or 270 days for [section 6\(2\) applications](#), outside of the UK during the qualifying period you must consider exercising discretion if they meet the other requirements.

Where the applicant exceeds the permitted absence by 30 days or less you must exercise discretion unless there are other grounds on which the application falls to be refused.

Where the applicant has absences of between 480 and 900 days for applications under [section 6\(1\) of the British Nationality Act 1981](#), or 300 and 540 days for applications under [section 6\(2\)](#) and otherwise meets the requirements you must only consider exercising discretion where the applicant has established their home, employment, family and finances in the UK, and one or more of the following applies:

- at least 2 years residence (for applications under [section 6\(1\)](#)), or 1 year (for applications [under section 6\(2\)](#)), without substantial absences immediately prior to the beginning of the qualifying period - if the period of absence is greater than 730 days (for [section 6\(1\)](#)) or 450 days (for [section 6\(2\)](#)) the period of residence must be at least 3 or 2 years respectively
- the excess absences are the result of:
  - postings abroad in Crown service under the UK government or in service designated under [section 2\(3\) of the British Nationality act 1981](#).
  - accompanying a British citizen spouse or civil partner on an appointment overseas
- the excess absences were an unavoidable consequence of the nature of the applicant's career, such as a merchant seaman or employment with a multinational company based in the UK with frequent travel abroad
- exceptionally compelling reasons of an occupational or compassionate nature to justify naturalisation now, such as a firm job offer where British citizenship is a statutory or mandatory requirement
- the applicant was prevented from being in the UK because they had been removed from the UK, and the decision to remove them was later overturned
- the applicant was incorrectly prevented from resuming permanent residence in the UK following an absence
- the excess absences were because the applicant was unable to return to the UK because of global pandemic

Where the applicant's absence exceeds those covered above as a result of Crown Service overseas, discretion should normally be exercised where:

- before an overseas posting the applicant was resident in the UK and Islands
- the excess absence was due to either:
  - a period of absence from the UK and Islands on a posting on Crown service
  - a period of absence from the UK and Islands accompanying a spouse, civil partner, partner or parent on a posting on Crown service

The person in Crown service should provide evidence of their employment and posting from the relevant Government department.

In other cases, where an applicant's absences exceed those covered above it is highly unlikely that discretion would be appropriate. You should normally refuse the application and advise them to re-apply when they are able to bring themselves with the statutory requirements, unless there are specific circumstances that warrant exceptional consideration at a senior level.

## Absences in the final year

You normally only exercise discretion for excessive absences during the final year of the qualifying period under [section 6\(1\)](#) if the [future intentions](#) requirement is met. Where the applicant is applying under [section 6\(2\)](#) or has met the future intentions requirement the following will apply. Total absences:

- of 100 days or less; exercise discretion
- between 100 and 180 days, where the residence requirement across the qualifying period is met – discretion is only appropriate where the applicant demonstrates strong links through the presence of family, employment and their home in the UK
- of more than 100 days but not more than 180 days where the residence requirements over the full qualifying period are not met - consider exercising discretion if both the following apply:
  - applicants have demonstrated that they have made this country their home by establishing a home, employment family, property and finances in the UK
  - the absence is justified by Crown service or by compelling occupational or compassionate reasons, including inability to travel because of a global pandemic
- exceeding 180 days where the residence requirements over the full qualifying period are met - consider exercising discretion if the applicant has demonstrated that they have made the UK their home
- exceeding 180 days where the residence requirements over the full qualifying period are not met – you must only exercise discretion where the applicant has demonstrated that they have made this country their home and there are exceptional circumstances such as Crown Service

## How to treat technical absences

Technical absence is where a person is regarded as absent from the UK even though they are physically present here. This is where they are:

- exempt from immigration control under [section 8\(3\) of the Immigration Act 1971](#) – diplomats
- exempt from immigration control under [section 8\(4\) of the Immigration Act 1971](#)
- members of home, Commonwealth or visiting forces
- detained in hospital or other place of detention or [unlawfully at large in the UK](#) following a [conviction for an offence](#)

- [detained](#), or on [temporary admission](#) or [immigration bail](#), or [unlawfully at large under the immigration laws](#)

The following are not technically absent from the UK:

- locally engaged non-diplomatic members of missions
- people exempt from immigration control under [section 8\(2\) of the Immigration Act 1971](#) – consular staff and certain employees of international organisations

## Treatment of technical absence for naturalisation purpose

There is discretion under [paragraphs 2\(b\) and 4 of schedule 1 to the British Nationality Act 1981](#) to treat:

- technical absences as residence for naturalisation purposes
- an applicant as present here on the date at the start of the qualifying period if it comes within the period of technical absence

## Armed Forces

For members of [Armed forces](#) see the [Crown, designated or Armed forces](#) section of this guidance.

### Related content

[Contents](#)

# Applicants exempt from immigration control under section 8(3) or (4) of the Immigration Act

There are 3 categories of people who are treated as exempt from immigration control under [section 8\(3\) and \(4\) of the Immigration Act](#):

- those who are, or have been, members of the home forces, such as HM Forces and were serving in the UK on the date of application
- past and present members of the diplomatic staff of a mission
- a Commonwealth or visiting force, whether locally engaged or otherwise
- past and present locally engaged members of the non-diplomatic administrative, technical, and service staff of a mission who:
  - started their employment before 1 August 1988
  - were locally recruited on or after 1 August 1988 and were not at that time entitled to exemption from control but became so entitled upon re-admission following an absence abroad

## Diplomats and members of diplomatic missions

[Section 8\(3\) of the Immigration Act 1971](#) gives total exemption from immigration control to members of a diplomatic mission. This is the head of a mission, members of the diplomatic staff and the administrative, technical, and service staff. Exemption is also granted to a person who belongs to the family and forms part of the household of the member. Private servants of members of a mission do not qualify for exemption.

You must consider exercising discretion to disregard up to 730 days technical absence in the 5-year qualifying period and up to 450 days technical absence in the 3-year qualifying period if the applicant meets the requirements below:

- they were granted indefinite leave to remain at least 12 months before applying for naturalisation
- they can show strong links with the UK which are wholly independent of the exempt employment, such as a period of residence before they entered the exempt employment
- they otherwise qualify for naturalisation

There may be exceptional reasons relating to either the applicant's employment or to the interests of the UK when you should normally exercise discretion. This might be where the applicant is a foreign or Commonwealth diplomat who has rendered service to UK interests or has spent a significant part of their career here and wishes to live here permanently in retirement.

However, you must not normally disregard more than 730 (5-year route) or 450 (3-year route) days technical absence unless there were particularly compelling circumstances relating to the applicant or the interests of the UK. You should not normally expect to naturalise a serving diplomat, and any such case should be referred to Foreign and Commonwealth Office (FCO). Normally a serving diplomat should wait until the exempt employment has ended, or is about to end, before applying for British citizenship. You must only exceptionally grant an application in these circumstances.

You must check the applicant's immigration status, where it is either known or suspected that the applicant has ceased to be a member of a household and therefore ceased to be exempt.

## Locally engaged staff (non-diplomats)

[Section 8\(3\)](#) was amended by the Immigration Act 1988 to ensure that, from 1 August 1988, locally engaged members of a mission in the non-diplomatic categories of administrative and technical staff and service staff, and their family would only be entitled to exemption from control if they entered the UK either:

- as a member of that mission
- to take up a post offered to them before arrival

This had been done to prevent any abuse of obtaining employment at a mission to prolong a person's stay in the UK when the person would not otherwise qualify under the Immigration Rules.

Those who began their exempt employment before 1 August 1988 are exempt from control. However, you must normally treat any technical absence as residence if the applicant either:

- has ceased to be in exempt employment and has obtained or could immediately be granted indefinite leave to remain (ILR)
- would immediately be granted ILR on leaving exempt employment
- otherwise qualifies for naturalisation

If the applicant is otherwise qualified for naturalisation and has ceased to be exempt from control but has not been granted ILR, you must consult Permanent Migration casework. They should be asked to advise if they would be likely to grant ILR if the applicant's exempt employment ended now.

If the applicant is otherwise qualified for naturalisation, and has already been, or would be likely to be, given ILR, you must grant the application.

If the applicant is otherwise qualified for naturalisation but has not been, or is unlikely to be, given ILR, you must normally refuse the application unless there are particularly compelling circumstances which might justify the grant of naturalisation now.

## Members of households

You must apply the same criteria to members of diplomats' households when considering whether to treat technical absence as residence.

Members of households are defined as:

- spouse/civil partner
- dependent children under the age of 18
- dependent children over the age of 18 who are still in full time education
- dependent relatives who formed part of the household abroad, such as an elderly widowed parent
- other close relatives who have no one to look after them, such as young, orphaned brothers and sisters

You must take care in cases where it is known or suspected that the applicant has ceased to be a member of a household, and so ceased to be entitled to an exemption. If so, the applicant may either meet the normal residence requirements because they have no technical absence or need to regularise their stay.

## Detention following a conviction for an offence

If the applicant is detained in hospital, or other place of detention in the UK, or is unlawfully at large following conviction for an offence you must not normally treat the technical absence as residence unless:

- the applicant has been granted a free pardon by the exercise of the Royal Prerogative of Mercy
- it has been officially recognised that the grounds on which the applicant was sentenced cannot be relied on
- the conviction is spent under the Rehabilitation of Offenders Act 1974

## Detention

If an applicant has been granted leave to enter the UK at the end of a period of detention you must normally count the period of detention as residence.

If the applicant was either removed, or departed voluntarily, from the UK at the end of the period of detention, you must not normally exercise discretion to count this period of 'technical absence' as residence.

## Temporary admission and immigration bail

Immigration Bail replaced the previous powers of temporary admission, temporary release and immigration judge or Chief Immigration Officer (CIO) bail in January 2018.

An immigration officer may release a person into the UK on immigration bail, as an alternative to detention. This is not technical absence. However, you must treat periods of immigration bail (and previous period of temporary admission) in a similar way to periods of detention.

If a person has been removed, or has made a voluntary departure, from the UK following a period of immigration bail or temporary admission, you must treat that period as if it were a period of 'technical absence'. However, if you are refusing the application on that basis, you must not say that the Secretary of State is not prepared to exercise discretion to waive a 'technical absence'. Instead you must use the following wording (amend as appropriate when addressing a representative):

'The Secretary of State is not obliged to naturalise a person who meets the formal statutory requirements, and will not normally be prepared to naturalise a person whose period of immigration bail under the Immigration Act 2016 [or temporary admission under the Immigration Act 1971], combined with any absences from the United Kingdom during the 5 year period where applying under [section 6\(1\) of the 1981 Act](#) or 3 year period where applying under [section 6 \(2\) of the 1981 Act](#) ending with the date of application, exceeds 450 or 270 days respectively.

Your application has been carefully considered, but the Secretary of State is not of the opinion that there are exceptional circumstances in your case which would justify a departure from the normal practice'

## Periods unlawfully at large under the immigration laws

You must treat time when a person was unlawfully at large in the UK in the same way as periods of immigration bail and detention. Periods of unlawful presence in the UK when a person should be in detention or while on immigration bail should not normally count as residence for the purposes of naturalisation.

### Related content

[Contents](#)

# Immigration law

This page tells you about applications for naturalisation and immigration time restrictions.

## Free from immigration time restrictions

All applicants for naturalisation must be free from immigration time restrictions on the date of application. There is no discretion to waive this requirement. It is important to note that this does not mean all applicants must hold indefinite leave to enter (ILE) or indefinite leave to remain (ILR) in the UK. In addition to holding ILE or ILR the following must also be treated as meeting this requirement:

- people who have the right of abode in the UK
- people who are not in the UK, unless it is clear that they are applying from outside the UK to circumvent the requirement and would otherwise be subject to immigration conditions
- people who have entered the UK illegally and have not been granted limited leave, although these will normally fall to be refused on the fact that they have breached immigration laws
- people who have overstayed a limited leave to enter or remain
- people exempt from immigration control [under section 8\(2\), 8\(3\) or 8\(4\) of the Immigration act 1971](#) unless technically absent from the UK

A person is not regarded as being free from immigration time restrictions if they:

- are on immigration bail
- are in immigration detention
- have absconded from immigration bail or detention / or are here unlawfully

A person who is outside the UK is not subject to an immigration time restriction. However, a person who applies from outside the UK purely to get around this requirement should normally be refused. The decision should be made at Senior Caseworker level. Where you are refusing an application on the basis that they are applying from outside the UK in an attempt to circumvent the requirements you must include the following explanation as part of the decision letter:

“The Secretary of State is not obliged to naturalise a person who meets the requirements in [schedule 1 to the 1981 act](#), and will not normally be prepared to do so if it appears to her that the sole or main purpose in applying from outside the UK was to circumvent the requirement for the applicant to be free, on the date of application, from any restriction under the immigration laws on the maximum length of their stay in the UK.”

## European Economic Area (EEA) nationals

For people who applied for naturalisation from 1 July 2021 onwards, EEA and Swiss nationals and their family members will be free from immigration time restrictions on the date of application if they:

- benefit as an Irish national
- have ILR under the EU Settlement Scheme (EUSS): - they can show that they have been free from immigration time restrictions for 12 months before applying using a combination of current EUSS, leave and permanent residence they previously held under the EEA Regulations
- have been granted indefinite leave to remain under the Immigration Rules on another basis
- are entitled by virtue of diplomatic status to exemption from UK immigration control
- hold an automatic right to reside in the UK permanently under the terms of the Withdrawal Agreement, having previously been granted LTE/R (pre-settled status) under the EUSS - please refer to the qualified persons guidance to assess whether a Withdrawal Agreement right to permanent residence is held

## Permanent residence under the EEA Regulations

Where an EEA or Swiss national (or their family members) held permanent residence status under the EEA regulations but did not make an EUSS application before the end of the grace period on 30 June 2021, they will have lost their EEA residential rights and will no longer be free from immigration time restrictions based on their permanent residence under the EEA Regulations.

Information about EEA nationals who applied before 1 July 2021 can be found in [EEA nationals](#).

## Evidence of freedom from immigration time restrictions

A person can demonstrate that they are free from time restrictions by producing:

- a passport showing permission to remain permanently in the UK
- the Home Office letter showing permission to remain permanently in the UK
- a biometric residence permit (BRP) showing ILR, ILE or no time limits
- a certificate of entitlement to the right of abode
- an EUSS record showing they have been granted EUSS ILR (settled status)
- evidence of a Withdrawal Agreement right to reside permanently on the basis of qualifying activity for the relevant period

If the applicant has ILR (settled status) granted through the EUSS, you must check the date of grant against Home Office records.

Where a person was settled in the UK before 1 January 1973, they may be free from immigration time restrictions. Such cases must be considered in line with the Windrush Scheme casework guidance.

## Free from immigration time restrictions for 12 months

Applicants under section 6(1) should be free from immigration time restrictions not only on the date of application, but also for 12 months prior.

You may encounter applications from EEA or Swiss applicants (or their family member) who hold LTE/R (pre-settled status) under the EUSS, or who have been granted ILR (settled status) under the EUSS but have not held it for 12 months at the date of their naturalisation application.

In these instances, checks should be conducted to see whether the applicant had acquired a Withdrawal Agreement right to reside permanently on the basis of qualifying activity for the relevant period.

If they held this status for 12 months before being granted ILR (settled status) under the EUSS, they will have met the requirement of being free from immigration time restrictions for 12 months.

## Applicants under section 6(1) who have not been free from immigration time restrictions for 12 months

There is also discretion to waive this requirement in certain circumstances.

Discretion to disregard immigration time restrictions in the 12 months prior to application can be exercised if one of more of the following is met:

- the applicant had less than 12 months free from time restrictions when they applied, but meets the requirement by the time you consider the application, and all the other requirements are met
- the applicant had been put on conditions when returning to the UK, but has since established that they were a returning resident or exempt from control
- the period of limited leave was less than 10 days at the beginning of the 12-month period
- the period of limited leave was between 10 and 90 days at the beginning of the 12-month period, and the applicant:
  - meets all the other requirements
  - has strong links with the UK through having established their home, property and family here
- the period of limited leave was more than 90 days at the beginning of the 12-month period, and:
  - the applicant meets all the other requirements
  - the applicant has strong links with the UK through having established their home, property and family here
  - there are compelling business or compassionate reasons to justify granting now
- the period of limited leave was more than 10 days at the beginning of the 12-month period, and:
  - the applicant does not meet all the other requirements

- has strong links with the UK through having established their home, property and family here
- there are compelling business or compassionate reasons to justify granting now
- there are exceptionally compelling circumstances.
- the applicant made an application for ILR at least 15 months before the citizenship application, and was granted following a delay which was not their fault
- an application for leave or asylum was refused in error and, if it had been granted correctly, the applicant could have applied for ILR and met the requirements on the date of application

## Breaches of immigration law in the qualifying period

One of the requirements for naturalisation is that the person should not have been in breach of the immigration laws in the residential qualifying period.

A High Court judgment handed down on 21 December 2022 found the Withdrawal Agreement residence right of an individual with pre-settled status does not expire for failure to make a second application to the EU Settlement Scheme. From September 2023 people with LTE/R (pre-settled status) under the EU Settlement Scheme (EUSS) will have their status automatically extended by 2 years before it expires if they have not obtained settled status.

These individuals should not be treated as having been in the UK unlawfully unless there is specific evidence their status has been revoked or otherwise lapsed due to excess absences.

The Nationality and Borders Act 2022 amended the British Nationality Act 1981 so that where a person has been granted indefinite leave to enter or remain in the UK, they can be treated as meeting the requirement to have been lawfully resident without enquiring into whether they have been in the UK in breach of immigration laws prior to their grant of indefinite leave.

This only applies where a person has made an application for and been granted indefinite leave under the Immigration Rules, including settled status under the EU Settlement Scheme. It does not apply where a person has acquired a Withdrawal Agreement right to reside in the UK permanently but has not obtained indefinite leave under the Immigration Rules, including settled status under the EU Settlement Scheme. Such cases remain subject to the lawful residence assessment.

If a person entered the UK illegally on or after 7 March 2023, you must refer to the section on the [citizenship ban](#) below.

## Applications received from people with indefinite leave to enter or remain in the UK

If the applicant has indefinite leave to enter or remain in the UK (ILE or ILR) you do not need to look back to see if they were here lawfully. You may proceed to grant the application if all the other requirements are met.

You do not need to ask for evidence of the person's status prior to them being granted ILE or ILR, or whether they were working lawfully, or what their basis of stay was in the UK. For example, you do not need to enquire what activity was being undertaken or whether EEA nationals with ILR needed or had comprehensive sickness insurance. This will apply to most cases.

It may still be appropriate to continue to apply the requirement in certain circumstances, such as where information has subsequently come to light which, had it been known at the time, might have affected the decision to grant indefinite leave, or might now lead to revocation of ILE / ILR. In such cases you must make a thorough assessment of the person's immigration history. If there were periods of unlawful presence in the UK, you must consider whether there were any factors that might make it appropriate to exercise discretion using the guidance at [Considering immigration breaches](#).

The good character guidance has been amended to be consistent with this approach.

## Applications from people with the right of abode in the UK

Certain British and Commonwealth nationals have the Right of abode in the UK. A person with the right of abode is not subject to immigration control and so will have been in the UK lawfully during the qualifying period.

## Citizens of Ireland

Irish citizens can enter and stay in the UK without requiring permission, see Common travel area guidance. (There are some limited exceptions to this, where the person is subject to a deportation order, exclusion decision or exclusion order, or travel ban) They will therefore have been in the UK lawfully during the qualifying period.

## The citizenship ban

The Illegal Migration Act 2023 introduced a "citizenship ban". This will apply where the applicant:

- required leave to enter the United Kingdom, but entered the United Kingdom:
  - without leave to enter (or with leave to enter that was obtained by deception)
  - in breach of a deportation order
  - without a valid entry clearance if it was required; or without a valid electronic travel authorisation if one was required.

- entered or arrived on or after 7 March 2023
- did not come directly from a country in which their life and liberty were threatened by reason of their race, religion, nationality, membership of a particular social group or political opinion

They also will not qualify if they entered Jersey, Guernsey or the Isle of Man, or an overseas territory, in the same way.

There is an exemption to the citizenship ban where treating a person as ineligible for citizenship would breach the United Kingdom's obligations under the Human Rights Convention. This means that we will need to consider the application, although not necessarily grant.

It is unlikely that you will see any applications where this applies for some time. This is because a person who enters on or after 7 March 2023 would not be able to apply for naturalisation for many years (if ever, as they will be banned from settlement). However, if you do come across such an application, you must refer it to a senior caseworker for advice.

## **Related content**

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# Future intentions requirement

This section tells you about the future intentions requirement for those applying for naturalisation under section 6(1).

The main purpose of the requirement is that those wishing to be naturalised as British citizens should not already have decided, or intend, to break their links with the UK. The clearest indicator of this will be past behaviour. If that suggests that the requirement is met, and there is no reason to think this will not continue, the applicant's statement about future intentions may be taken at face value.

A person must intend, if naturalised, to either:

- have their principal home in the UK
- enter into, or continue in either:
  - Crown service under the government of the UK
  - an international organisation of which the UK or HM Government is a member
  - a company or association established in the UK

## Principal home in the UK

If applicants say their intention is to have their principal home in the UK, you should accept that they meet the requirement if they:

- meet the residence requirements, without the need to exercise any discretion over excess absences other than up to 30 days
- have an established home here
- have been, or intend to be, absent from the UK for not more than 6 months
- the absence was, or will be, clearly temporary
- if it is an intended absence, we are satisfied they intend to return to the UK
- they have maintained an established home here 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, either:
  - a partner who is or intends to live outside of the UK
  - a recent absence from the UK for a period of 6 months or more

Where it is proposed to exercise discretion to waive excess absences, you must be satisfied that the applicant has an established residence, family and a substantial proportion of any estate here. You should normally accept that situation will continue, and that the future intentions requirement has therefore been met, unless you have information that, since the date of the application, the applicant or their partner no longer has an established residence here or is planning to move abroad.

Where it is not certain that a residence has been established you must make enquiries to see whether there is evidence of a principal residence outside this country including whether the:

- applicant or their partner owns property abroad
- applicant's family live abroad, either in the family home or elsewhere

Where there is such evidence, or your doubts cannot be resolved satisfactorily, you must refuse the application.

Information may also come to our attention that HMRC regard an applicant as domiciled abroad for tax purposes. In such cases, you must request the applicant's permission to contact the HMRC. You should then ask the HMRC to provide us with a copy of the applicant's completed 'Domicile Enquiry' questionnaire, which may throw some light on future intentions. If the applicant refuses permission, you must refuse the application.

The fact that an applicant's spouse or partner is not applying for citizenship should not, of itself, be taken as evidence that the requirement is not met. In such a case, however, you should make enquiries of the applicant - whether the spouse or partner is resident abroad or whether there is any evidence that the spouse or partner intends to move abroad. The fact that a spouse or partner is living, or will shortly be living, abroad should not normally be taken as evidence that the requirement is not met if any of the following apply:

- the couple are separated
- the spouse or partner has applied for, and is awaiting, an entry clearance
- you are otherwise satisfied that the spouse or partner intends to join the applicant here
- it is clear the couple are content to live apart for the foreseeable future

If none of these reasons apply, and the information suggests that any applicant maintains, or intends shortly to maintain, their principal residence abroad, spends substantial periods with their spouse or partner and children abroad, the application should normally be refused.

## Applicant intends to live outside the UK

If applicants make it clear that, while they intend to live in the UK for a period, they have made firm plans to establish their principal home abroad at some future date the application must be refused. You must not refuse an application solely on the suspicion that the applicant will reside outside of the UK.

If the applicant is abroad or is about to go abroad for a continuous period of more than 6 months, you should normally refuse the application and advise the applicant to re-apply, on their return to the UK, for permanent residence. An exception may be made to the general rule, however, where any of the following apply:

- 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

Where an applicant has more than one home and their principal home is outside of the UK at the time of application you must refuse the application.

### **Related content**

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# No principal home

There are some applicants whose way of life does not allow them to maintain a principal home in the conventional sense. This applies to some international celebrities. Applications from such people must be dealt with on their merits, but you must establish:

- their position under UK tax law
- what, if any, property they own here
- what personal connections they may have with the UK
- the length of time they spend in the UK each year
- the extent to which they identify themselves with the UK

You should normally accept that applicants meet the requirement if they meet all the following:

- are domiciled in the UK for tax
- spend a reasonable period of time in the UK other than when working in the UK
- have some personal connections in the UK

## International organisations

Employment with an international organisation of which the UK or HM government is a member was added to the types of service designated under the [British Nationality Act 1981](#) in 2006. Where the employment relates to a period before 2006 you must not consider it as designated service.

There is no exhaustive list of international organisations, of which the UK or HM Government is a member for the purpose of the [British Nationality Act 1981](#). When considering whether an individual's employment falls within the provisions for designated service, the following requirements must be met:

- the organisation must be an intergovernmental organisation composed primarily of sovereign states, of which the UK or HM Government must be a direct member of the organisation, participate in its activities and play an active role in the governing body:
  - examples of intergovernmental organisations include the United Nations (UN), United Nations Children Fund (UNICEF) and the World Trade Organisation
- the individual is an employee, or giving services both:
  - on a full-time basis without payment or for a nominal sum
  - direct to, and for the benefit of, the organisation

You should refuse applications where the applicant only provides services to an international organisation on an occasional basis as they have not established a substantial degree of commitment and direct involvement over a period of time. Each case must be considered on its merits.

Whilst the UK may be a member of an organisation it is important to be aware that this may not be the case for any subsidiary body.

## Service of a company established in the UK

What constitutes such service is not defined in the [British Nationality Act 1981](#). But we should accept that applicants working outside the UK are in such service if they are any of the following:

- an employee
- self-employed and have registered themselves as a company
- self-employed as a partner in a going concern
- a company director

A company may be regarded as established in the UK if all the following apply, it is:

- described as an English, Scottish, Wales, Northern Irish or overseas company registered under the Companies Acts
- a 'going' concern
- not registered for convenience only

A company may not be regarded as established in the UK if any of the following apply:

- it has not been registered as an English, Scottish, Northern Irish or overseas company
- it is not a 'going' concern
- it is registered for convenience only
- the distribution of its workforce is such that it is essentially an overseas company with a notional presence in the UK

## Applicants serving abroad in Crown or other qualifying service or employment

Applicants who are in Crown or other qualifying service or employment abroad at the time of application, and who clearly intend to continue in that service or employment for at least 5 years from the date the application is substantively considered, should be regarded as meeting the future intentions requirement.

If an applicant cannot, or intends not to, complete 5 years' service or employment from the date when the application is considered, you must consider their future intentions on completion of the service or employment. These may be regarded as met if the applicant can satisfy the Home Office of an intention to remain in, or return to, or come to, the UK on completion of the service or employment. You can be satisfied if any of the following apply. The applicant has:

- already bought property here
- strong family links here

- always returned to this country after previous employment abroad

in addition to this both the following must apply:

- they have stated intention to live in the UK on the completion of the service or employment
- there is no information in the papers to suggest otherwise

## **Applicants who intend to enter Crown or other qualifying service or employment**

Applicants who state that they intend, on being naturalised, to enter Crown or other qualifying service or employment for 5 years or more from the date of substantive consideration of the application may be regarded as meeting the future intentions requirement.

If the intended period of qualifying service or employment is for less than 5 years from the date that the application is considered, you must consider the applicants future intentions in the normal way.

## **Applicants accompanying an established spouse, or civil partner, on a posting outside the UK**

You must consider the applicant as meeting the future intentions requirement where they are accompanying an established spouse or civil partner on a posting outside the UK for a period of 6 months or more where the applicant's spouse or civil partner circumstances would meet the principal home requirement.

You must obtain written confirmation of the future intentions of the applicant's spouse or civil partner. This written confirmation will normally be sufficient.

However, you should not normally regard the future intentions requirement as being met where; for example, there is evidence to suggest that the applicant's own intentions do not correspond with those of their spouse or civil partner.

For a spouse or civil partner to be considered as established they must have been married, in a civil partnership or cohabited with their partner for a period of at least 12 months. Where a government department confirms the length of relationship you do not need to query this further. In other cases, you must ask for documentary evidence of cohabitation covering the 12 months immediately prior to application. Evidence should be in the form of official documents such as bank statements and utility bills, you must not accept circular mail.

### **Related content**

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# Refusal where future intentions are not met

Whenever you tell applicants you are not satisfied that they intend to make their home or principal home in the UK if naturalised, you must take care to ensure that the wording of the refusal letter reflects the requirements of [paragraph 1\(1\)\(d\)\(i\) of Schedule 1 to the British Nationality Act 1981](#) for example 'The Secretary of State is not satisfied your intentions are such that, in event of a certificate of naturalisation as a British citizen being granted to you, your home or principal home would be in the United Kingdom'.

## **Related content**

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# Crown, designated and armed forces service

This page tells you how to consider application for naturalisation where the person is:

- applying on the basis of their [Crown service](#)
- a current or former member of the [British armed forces](#)
- the [spouse, civil partner or child of a person in the armed forces](#)
- the [spouse or civil partner of a British citizen in Crown or designated service outside the UK](#)

Designated service is service that the Home Secretary has passed an order designating it as being closely linked with the activities outside the UK of the UK government or the government of a qualifying overseas territory. For more information see the list of designated service.

## Applicants applying on the basis of Crown service

This section tells you how to consider an application under section 6(1) on the basis of the applicant's crown service, rather than on the residence requirements (paragraph 1(3) of schedule 1 to the British Nationality Act 1981).

An applicant is in Crown service if they are:

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

Honorary appointments, such as legal adviser to a British Embassy or High Commission, may be included on this definition.

To qualify under this provision a person must be serving outside the UK on the date of application.

## Evidence of Crown service

An applicant can show that they are in Crown service by providing a statement or certificate from a government department or branch of the armed service. If you are in doubt about to whether an applicant's employment can be regarded as Crown service, you must ask the employers for more detailed information about the nature of the service and about who is responsible for paying the applicant.

## The requirements

Applicants applying under [section 6\(1\)](#) on grounds of Crown service abroad must meet the following requirements:

- good character
- knowledge of language and life in the UK
- [future intentions](#)

Naturalisation is at the discretion of the Home Secretary, but those applying based on their Crown service abroad are also expected to demonstrate that their service and connections with the UK are significant enough to justify exercising discretion.

## Criteria for discretion

In addition to the statutory requirements Crown service applicants are expected to meet the following criteria. These are set out in order of importance with quality of service being the most important:

- [quality of service](#)
- [connections with the UK](#)
- [rank or grade](#)
- [loyalty](#)
- [length of service](#)
- [advantage to UK](#)

## Quality of service

If this quality of service criterion is not met, you must not normally exercise discretion to naturalise the applicant, even if the statutory requirements and the other criteria are met.

Applicants must normally:

- be the holder of a responsible post
- have performed their duties to an exceptionally high standard

Examples of this are:

- outstanding military service, especially in time of war
- outstanding service representing HM Government (such as a vice consul)
- other service, significantly above and beyond the call of duty, which has been of direct benefit to the UK and its interests

## Connections with the UK

Applicants should normally show, in order of importance:

- past residence in the UK - the longer and more recent the better
- close family members - spouse, children, parents, siblings - in the UK
- property house, other property, investments including savings accounts, in the UK
- other contacts in the UK

A future intention to move to or return to the UK is not relevant to establishing a connection with the UK.

## Rank or grade

The more senior the applicant, the more likely they are to be able to meet the outstanding service requirement. However, this does not rule out an applicant who has served in a junior post and who may have performed particularly deserving service.

## Loyalty

You must normally expect loyalty to have been tested and have been shown to be beyond question. Examples might include someone who has put themselves at risk from a hostile foreign government or made themselves unpopular among their people by their commitment to the UK.

## Length of service

Long service on its own is not sufficient to exercise discretion. You must normally expect the applicant to have maintained exceptional service for at least 10 years.

## Advantage to the UK

A person in Crown service who does not meet some or any of the above criteria may still be naturalised if there is a strong argument that it would be operationally advantageous for them to be a British citizen. In such cases, the employing department or service must demonstrate that advantage in detail. You must not naturalise a person on this basis alone unless it is shown that it is vital to UK interests that the applicant should be naturalised.

### **Related content**

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# Current and former members of the armed forces

This section tells you how to consider applications from current and former members of the armed forces.

Armed forces applicants must meet the following requirements:

- to be [free of immigration time restrictions](#) on the application date
- the good character requirement
- the knowledge of language and life in the United Kingdom requirements
- the [future intentions](#) requirement

Applicants serving in Brigade of Gurkhas must also meet the following criteria.

## Currently serving members of the Brigade of Gurkhas

If the applicant is currently serving in the Brigade of Gurkhas, you must:

- calculate the number of days' [technical absence](#) in the qualifying period and exclude this from the residence count
- combine [technical absences](#) with actual absences to obtain the total number of days' absence during the qualifying period
- apply the normal levels of [permitted absence](#) and not exercise discretion over any excess absences

Most applications from serving members of the Brigade of Gurkhas will be refused as they will have excess absences. You must advise them of this using DocGen letter ICD2818.

If you have applied the criteria above, but an application from serving Gurkhas would still succeed, you must refer the case to the Deputy Chief caseworker.

### Related content

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# Former and current armed forces personnel

This section tells you how to deal with applications from:

- former members of the armed forces, including former Gurkhas
- current members of the forces who are not in the Brigade of Gurkhas

## Absences

There is discretion within the [British Nationality Act 1981](#) to overlook the requirement to have been in the UK on the first day of the 5 year qualifying period.

You must normally exercise discretion where:

- the applicant was a member of the UK armed forces on the first day of the 5-year qualifying period
- they were unable to be physically present on that date because of their service in the armed forces
- they meet all the other requirements for [section 6\(1\)](#).

You must also treat any [‘technical’ absences](#) during the qualifying period as residence.

You must also disregard all actual absences from the UK that were due to the applicant’s armed forces service.

While applicants were in military service it is unlikely that their passports will have been stamped. However, as we would overlook any service-related absences, it is not necessary to see service records confirming each absence. You must, however, see evidence from the Ministry of Defence confirming duration of service in the armed forces. Any non-service-related absences can be confirmed by the applicant’s passport.

For periods after discharge from the forces ex-servicemen must produce normal evidence of residence either a passport or alternative evidence of residence.

## Immigration time restrictions

While a person is in the armed services, they are exempt from immigration control and so free from immigration time restrictions. Applicants will have been free from immigration time restrictions throughout their period of service. In many cases, former armed services personnel will have been granted Indefinite leave to remain (ILR) on discharge and will meet the requirement to have been free from immigration time restrictions in the 12 months prior to the date of application.

In some cases, the former armed forces member will have been granted 28 days limited leave on discharge before being granted ILR. In such cases you must

exercise discretion over the requirement to be free from immigration time restrictions in the 12-month period before making the application. You must not normally exercise discretion in this way if the former armed forces member had been granted a longer period of limited leave on other grounds.

Where an ex-member of the armed forces has not been granted Indefinite leave to enter (ILE) or ILR, you must refuse the application and advise the applicant to obtain ILE or ILR prior to submitting a further application for citizenship. You must refuse on either:

- breach of immigration laws if the applicant is here unlawfully
- not being free from immigration time restrictions if the person has limited leave to remain

## Refusals

You must not refuse an application from a current or former member of the armed forces, other than a currently serving member of the Brigade of Gurkhas, without first referring the case to the Chief Caseworker, who will determine if the case needs to be referred to ministers.

### Related content

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# Spouses, civil partners and children of members of the armed forces

This page tells you about considering spouses, civil partners and children of members of the armed forces for naturalisation.

Spouses, civil partners and children of servicemen are not exempt from immigration control while residing in the UK. Instead, they are generally given leave to remain as long as their spouse or civil partner is in service. While spouses and civil partners still have limited leave to remain, they will not be able to meet the criteria to be free of immigration time restrictions and you must refuse their applications. Any children will not normally meet the future intentions criteria for [section 3\(1\)](#).

Once spouses, partners and children become settled, they will be able to apply for naturalisation or registration. They may have high levels of absences either because they have been accompanying their spouse, civil partner or parent overseas or because they have not been able to accompany them while they are in the UK. You must consider disregarding any absences that occurred as a result of the spouse's or civil partner's absences using the same criteria as for an applicant in the forces.

Any child born in the UK to a parent who is in HM armed forces is automatically a British citizen. Where a child is not already a British citizen, we should consider the application in line with the parents and be prepared to waive the [section 3\(1\)](#) criterion for children over 13 years of age to have completed 2 years' residence in the UK.

Where the applicant is the spouse or civil partner of a member of the armed forces who is a British citizen, you must consider in accordance with the section on spouses or civil partners of British citizens in Crown or [designated service](#).

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# Spouses or civil partners of British citizens in Crown service (including armed forces) or designated service

This page tells you about considering applications for spouses and civil partners of British citizens in Crown or designated service.

When you are considering an application where the applicant is the spouse or civil partner of a British citizen who is in Crown or designated service, who was recruited for that service whilst in the UK, you can use discretion to waive the following requirements:

- the requirement to have been in the UK on a date 3 years before the date of application
- the requirements not to have been absent for more than 270 days in the 3-year qualifying period or more than 90 days in the final year of the qualifying period

## Criteria for discretion

The requirements above should only be waived where the:

- applicant is aged 18 or over, is of [full capacity](#) and is of good character
- applicant is on the date of application married to or is in a civil partnership with a British citizen who:
  - is serving abroad, or is likely soon to be posted abroad in Crown service or service designated under [section 2\(3\) of the British nationality act 1981](#)
  - was recruited to the service in question in the UK
- marriage or civil partnership has subsisted for at least 3 years on the date of application
- applicant is unlikely for the foreseeable future to be able to meet the residence requirements because of their spouse or civil partner's service abroad
- employing organisation certifies that naturalising the applicant would be in its interests in order to avoid difficulties in any of the following:
  - retaining the services of an essential officer
  - enabling an applicant to accompany the officer on a foreign posting of a security nature

Where the marriage or civil partnership has not subsisted for at least 3 years on the date of application, you must only exercise discretion where the employing service has provided compelling operational or security reasons to justify granting the application.

You must not apply discretion where the applicant and their spouse or civil partner has returned to the UK and a further posting abroad is unlikely to occur in the foreseeable future.

If the applicant is the spouse of civil partner of a member of the armed forces and does not have the citizenship of the country to which the couple are (or are likely to be) posted you can grant the application if the:

- applicant meets the good character and Knowledge of language and life in the UK (KoLL) requirements
- spouse or civil partner is serving abroad, or is likely soon to be posted abroad in Crown or designated and was recruited to the service in question in the UK

The employing organisation must provide information about the applicant's general character and suitability.

## Diplomatic Service spouses / civil partners

If the applicant's spouse is a British citizen in the Diplomatic Service, you must normally waive the residence requirements if:

- the application is supported by the Foreign and Commonwealth Office
- on the date of application, the British citizen spouse or civil partner is in Diplomatic Service employment, and was recruited to that service in the UK
- at the time the application is being considered, the British citizen spouse or civil partner is likely to continue in diplomatic service employment for the foreseeable future
- the applicant is aged 18 or over, is of [full capacity](#)
- the applicant meets the good character and KoLL requirements the marriage has subsisted for at least 3 years on the date of application

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# EEA nationals

This section tells you about European Economic Area (EEA) and Swiss nationals and their family members who applied before 1 July 2021, and whether they were free of immigration time restrictions.

**For people applying before 31 December 2020**, EEA and Swiss nationals and their family members were free of immigration time restrictions on the date of application if they:

- held permanent residence under the EEA Regulations – they must have been issued with a permanent residence card / document to apply for naturalisation
- had been granted indefinite leave to remain under the Immigration Rules
- (including under the EU Settlement Scheme (EUSS)) - where an applicant wishes to rely upon permanent residence under the EEA Regulations to demonstrate an earlier entitlement, they will need to have a permanent residence card
- were entitled by virtue of diplomatic status to exemption from UK immigration control
- benefitted under the Common Travel Area provisions as Irish nationals

**For people who applied between 1 January 2021 and 30 June 2021**, EEA and Swiss nationals and their family members were free from immigration time restrictions on the date of application if they:

- had indefinite leave to remain (ILR) under the EUSS - if so, they must rely on that to show that they are free from immigration time restrictions - (they can show that they have been free from immigration time restrictions for 12 months before applying using current EUSS leave and permanent residence they previously held under the EEA Regulations)
- had been granted indefinite leave to remain under the Immigration Rules on another basis
- had a permanent residence right under the EEA Regulations - if they do not have EUSS leave on the date of application - they will need a permanent residence card/document to apply for citizenship on this basis, but will not be able to apply for such a document if they do not already have one
- were entitled by virtue of diplomatic status to exemption from UK immigration control
- benefitted as an Irish national

For further information, see the guidance on European Economic Area and Swiss nationals free movement rights.

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# Considering immigration breaches

This annex tells you who is in breach of the immigration laws and when to exercise discretion over periods of breach. You must use this information where new information has come to light which, had it been known at the time, might have affected the decision to grant indefinite leave, or lead to revocation of indefinite leave to enter (ILE) / indefinite leave to remain (ILR).

'Breach of the immigration laws' for the purpose of the residence requirements refers only to unlawful residence. It does not include contravening immigration law in any other way, but this is considered as part of the good character requirement. However, it can include being in the UK without meeting an additional requirement, such as an EU, European Economic Area (EEA) or Swiss national not holding comprehensive sickness insurance if they needed to.

## People who are lawfully resident in the UK

The following people are not in breach of immigration laws:

- people with right of abode in the UK
- people with leave to enter to remain, including status under the EU Settlement Scheme (EUSS)
- citizens of Ireland
- crew of ships or aircraft
- people who are exempt from immigration control
- people who have disembarked at a UK port but are still in the immigration control area or have been detained or given immigration bail

People who were entitled to reside in the UK without leave under the EEA Regulations 2016 were lawfully resident in the UK whilst the Regulations were in force. They needed to apply to the EUSS before 30 June 2021 to avoid being in the UK unlawfully.

A person who is in the UK and does not meet any of the above criteria will be in breach, as defined in [section 50A of the British Nationality Act](#).

## People applying for further leave to remain - section 3C

A person with limited leave to enter or remain under the immigration rules who makes an 'in-time' application for further leave has their leave extended:

- until the decision is served or the application is withdrawn
- while an appeal could be brought (until their 'appeal rights are exhausted')
- while an appeal is pending

Citizenship applications, however, are made under the British Nationality Act 1981 and not under the immigration rules. It is consequently not possible to vary an application from one for leave, to one for citizenship. Making a citizenship application

does not give permission to stay in the UK. Applicants need to have valid leave until they have both received a decision on their nationality application and attended their naturalisation ceremony.

Further information can be found in the 3C and 3D leave guidance.

## EEA and Swiss nationals and their family members

EEA and Swiss nationals and their family members need to demonstrate they have been here lawfully during the 3- or 5-year qualifying period.

When considering whether an EEA or Swiss national, or their family member, was in the UK lawfully in the 3- or 5-year period before making their application, you may need to consider 3 different time periods:

- time before 1 January 2021- before the UK left the EU and the “transition period”
- time between 1 January 2021 and 30 June 2021 – the “Grace period”
- time from 1 July 2021 onwards – after the end of the Grace period; - EEA residential rights will no longer be valid unless they had been extended by making an in-time application to the EUSS that had not been resolved on the date the individual applied for citizenship

## Time spent in the UK before 1 January 2021

Following the United Kingdom’s departure from the European Union on 31 January 2020, there was a transition period, agreed as part of the [Withdrawal Agreement](#), until 31 December 2020. Until 31 December 2020 an EEA or Swiss national, or their family member, would be in the UK lawfully if they were relying on:

- an EEA right of residence
- leave to remain granted under the Immigration Rules, including status under the EUSS

## EEA or Swiss nationals or the family member of an EEA or Swiss national with a permanent residence card

If an EEA or Swiss national or their family member had a permanent residence card, you can accept that they were lawfully present in the UK for the 5-year period before it was issued. They will be able to rely on the permanent residence card to cover the period until 30 June 2021, unless they have been granted status under the EU Settlement Scheme. This is provided they have not lost their permanent residence, for example by being out of the UK for more than 2 years. Until 30 June 2021, the application form asked the applicant to enter their permanent card number along with the date of issue. This will give you details of their lawful stay in the UK.

## EEA or Swiss nationals and their family members granted indefinite leave to enter or remain (settled status) under the EU Settlement Scheme

The EUSS allows EEA and Swiss nationals and their family members who are resident in the UK prior to 31 December 2020 (or future family members who join a resident EEA or Swiss national after 31 December 2020 where the relationship existed at that point and continues to exist) to obtain the UK immigration status they need in order to continue living and working in the UK after 30 June 2021.

EEA and Swiss nationals only need to complete 3 key steps as part of their application to the scheme – prove their identity and nationality, show that they were resident in the UK and Islands by 31 December 2020, and declare any criminal convictions. Where the applicant chooses to provide their National Insurance number, their presence in the UK will be assessed on an automated basis using data held by HM Revenue & Customs and the Department for Work and Pensions.

An EEA or Swiss citizen or their family members who have a 5 years' continuous qualifying period of residence in the UK and Islands when they apply to the EU Settlement Scheme will be eligible for settled status (provided they also meet any other relevant eligibility and suitability criteria). Those with a continuous qualifying period of less than 5 years' will be eligible for pre-settled status (provided they also meet any other relevant eligibility and suitability criteria). A person who is granted pre-settled status can then apply for settled status as soon as they meet the eligibility criteria for it.

However, this grant of settled status (also known as indefinite leave to enter or remain) will not confirm that they were here lawfully, as defined by the British Nationality Act 1981, under the EEA Regulations during that time, as this is not a requirement of the EU Settlement Scheme. You may, therefore, need to request further information from the applicant to demonstrate this.

The naturalisation application form (Form AN) asks for information to confirm the applicant was lawfully in the UK for the relevant 3- or 5-year qualifying period.

A person granted status under the EUSS may have had dual running rights under both UK immigration rules (in accordance with their grant of status) and the EEA Regulations during their residence. To assess whether the person was here lawfully in accordance with the EEA Regulations (if required) prior to their grant of pre-settled or settled status you must look at the guidance on EEA/Swiss nationals and their family members. This includes the type of evidence you can take into account. You must assess whether the applicant was lawfully resident under the EEA Regulations in accordance with that guidance and therefore lawfully in the UK for any residence prior to the grant of pre-settled status or settled status.

If the information is not provided with the application form, you must request it.

You must assess whether the individual has been here lawfully during their 3- or 5-year residential period prior to pre-settled status or settled status, by considering on the balance of probabilities whether they were here:

- as a qualified person (such as a worker, student, self-employed, self-sufficient, retired or incapacitated person)
- as the family member of such a person

Evidence of this can include Advanced Passenger Information (API) data or documents previously submitted to satisfy their lawful residence. Where appropriate, you must also be satisfied that the person was lawfully in the UK, with comprehensive sickness insurance (CSI).

## Comprehensive sickness insurance (CSI)

The European Economic Area (EEA) Regulations require that the **following** categories must have held CSI to have been a qualified person:

- self-sufficient person
- student
- family member of a self-sufficient person or student

The Court of Justice of the European Union (CJEU) held in the case of *VI v HM Revenue and Customs C-247/20* (10 March 2022) that once an individual was “affiliated” to the NHS, they had CSI under the Free Movement Directive (or the equivalent under earlier Regulations)

“Affiliated” to the NHS was not defined by the CJEU but is considered to mean entitled to comprehensive and free NHS treatment. Under domestic law, an individual has such an entitlement when they are “ordinarily resident” in the UK. As a result, if an individual was ordinarily resident in the UK, they will be considered to have held CSI.

For those EEA and Swiss applicants who have been studying in the UK, or here as a self-sufficient person, you must check the guidance on European Economic Area nationals: qualified persons, to see what evidence is required to demonstrate that they were here lawfully.

## Applicants who have been studying or self-sufficient and are not able to show that they met the requirement to have comprehensive sickness insurance (CSI)

Information on CSI and how an individual can show that they held it can be found in the guidance on European Economic Area nationals: qualified persons. This includes how a person can do so by being “affiliated” to the NHS.

Following the case of *VI v HM Revenue and Customs* (see above) a person who was ordinarily resident in the UK will be considered to have held CSI. “Ordinarily resident” means that an individual’s residence in the UK is voluntary, lawful and for a settled

purpose. The approach to assess whether an individual was ordinarily resident in the UK for free movement purposes is set out in guidance on European Economic Area nationals: qualified persons.

If a person cannot demonstrate that they had CSI, you must consider why they did not hold it. Where someone has been granted ILR under the EUSS but has not been resident here in accordance with the EEA regulations (prior to grant of pre-settled status or settled status) due to a lack of comprehensive sickness insurance you should consider whether it is appropriate to exercise discretion in their favour.

Some applicants will have previously had an application for a document to confirm their permanent residence refused, based on not having CSI. You must assess whether they would have qualified following the VI judgement. If not, you must consider the reasons given, and why they did not then obtain it, and consider whether there are compelling grounds to exercise discretion. (Should they make a new application, we do not have agreement to revisit old decisions, including reconsideration.)

## Time spent in the UK between 1 January 2021 and 30 June 2021

From 1 January 2021, a person who has EUSS leave – whether settled or pre-settled status – is in the UK only on the basis of that immigration leave which they hold. They must use their EUSS status to show that they were lawfully resident for the period after they were granted that status.

From 1 January 2021 until 30 June 2021, during the “Grace Period”, a person who does not have EUSS leave could still rely on an EEA residence right to reside here lawfully but could not apply for a document confirming that right. If they do not already hold a permanent residence document, they were, therefore, not able to apply to naturalise without first gaining EUSS ILR. However, in any subsequent naturalisation application, they would still be able to provide evidence that they were exercising an EEA right prior to the grant of EUSS ILR to show that they were lawfully resident throughout the relevant residential period. They would not need a permanent residence document but may supply one if it supports their application.

For further information see the guidance on European Economic Area (EEA) and Swiss Nationals: Free Movement Rights.

## Time spent in the UK from 1 July 2021 onwards

From 1 July 2021 onwards, EEA and Swiss nationals will normally provide evidence of their EUSS ILR or any other ILR they might hold, as part of their naturalisation application, demonstrating they are free from immigration time restrictions.

The one exception is if they held a document certifying permanent residence or a permanent residence card before submitting their in-time EUSS application. In this instance, their permanent residence will extend their permission to stay whilst their EUSS application remains outstanding. Should such individuals apply to naturalise

after 30 June 2021 but before receiving a decision on their EUSS claim, they can use their permanent residence card to do so.

## Other EEA or Swiss nationals

There may be applicants who would like to naturalise as British citizens who have been resident in the UK since before the introduction of permanent residence in 2006 and are therefore free from time restrictions. The applicant is asked on the application form to indicate how they have acquired the status 'free from time restrictions'. Such people would be here lawfully unless they lost ILR through excessive absences from the UK.

People who were in the UK in accordance with EU law may have acquired permanent residence at some point, despite not having a document. A right to reside under EU law exists automatically where the terms of the EEA Regulations are met. If they had time periods where they were not here in accordance with the EEA Regulations you must determine if they were here lawfully on the basis that they had previously acquired permanent residence and were no longer required to meet certain requirements, such as being a qualified person.

## Immigration breaches and people who have sought asylum in the UK

This section tells you how to consider applications from former asylum seekers.

These will normally fall into 3 categories.

Applicants who claimed asylum immediately on arrival in the UK and were granted temporary admission or immigration bail pending determination of their claim will not have been in breach of the immigration laws while their application was being considered or during consideration of any in-time appeals. Even if their application is refused and any subsequent appeal dismissed, the applicant will still not have been in breach, until their temporary admission or immigration bail was revoked and their leave to enter was formally refused.

Applicants who claimed asylum during a period of leave to enter or remain in the UK were not in breach of the immigration laws during consideration of their asylum claim and any in-time appeals. However, if the application was refused and the appeal dismissed, they will normally have been given 28 days' further leave to remain. They will have been in breach if they remained in the UK after that 28-day period. This also applies to cases where the applicant was granted leave to enter or remain under a Humanitarian Evacuation Programme (HEP).

Applicants who made an asylum claim whilst in the UK illegally (for example, as an overstayer or following clandestine entry), will have been in the UK in breach of the immigration laws until they were granted leave to remain in the UK. They will be in breach throughout the period when the application (and any subsequent appeal) was being considered. This will have been the case whether or not they were given temporary admission or immigration bail following detection.

## Discretion to waive immigration breaches

There is some discretion, in the special circumstances of a particular case, to disregard breaches of the immigration laws (unlawful residence) during the qualifying period. Such breaches only involve being here without leave to enter or remain. Other immigration offences, such as breaching a restriction on taking employment and harbouring other immigration offenders, should not be considered under the residence requirement, but under the good character requirement.

It will normally be clear from case-working systems if a person is or has been in breach. Where this is in doubt, you must obtain the applicant's previous files and seek advice from your senior caseworker if necessary.

You should only exercise discretion to disregard a period of unlawful residence if there are reasons for this which were clearly outside the applicant's control, or if the breach was genuinely inadvertent and short.

A person may also be in breach if they have not complied fully with all the requirements of the route they are on. Following the introduction of the EUSS, you may increasingly see applications from EEA or Swiss nationals who have not fully complied with additional requirements under the EEA regulations, such as having comprehensive sickness insurance where they needed it, and who may therefore have been in breach of immigration law. When considering such applications, you should consider all the facts surrounding such a breach and make a full assessment about whether discretion should be exercised in their favour.

Examples of when you might exercise discretion include where:

- the breach occurred at a time when the applicant was a minor whose parents failed to obtain or renew their leave
- the EUSS application of an EEA or Swiss citizen (or their close family member) was submitted after 30 June 2021 but was later accepted as having reasonable grounds for missing the deadline and was resolved successfully
- the applicant was given permission to stay as an 'exceptional assurance' because of their inability to leave the UK or apply for an extension of stay due to the COVID-19 pandemic
- 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 themselves 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
- the breach was because the applicant did not meet an additional/implicit condition of stay, rather than illegal entry or overstaying, such as an EEA or Swiss national not having CSI and can provide sufficient evidence to justify discretion being exercised in their favour

You should not exercise discretion to disregard a period of unlawful residence in any other circumstances, and particularly not when the breach was both substantial and deliberate.

This includes:

- unlawful residence after the person tried to regularise their stay (except in the cases referred to above)
- unlawful residence where a person who had deliberately entered or remained in the UK without permission was granted leave under the former 14-year long residence policy or under a concession (unless refugee status was granted as a result)

You must not use this discretion for breaches other than unlawful residence during the qualifying period such as working in breach of conditions, or failure to observe reporting requirements. Where the residence requirement is met with or without the exercise of discretion, it is then a separate test whether the person meets the good character requirement, and a history of non-compliance with immigration requirements is a factor to be weighed in that decision.

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