

<b>Title: Counter-Terrorism and Security Bill - British Overseas Territories Citizens</b>  <b>IA No: HO0156</b>  <b>Lead department or agency: Home Office</b>  <b>Other departments or agencies:</b>	Impact Assessment (IA)	
	<b>Date:</b> 18/11/2014	
	<b>Stage:</b> Final	
	<b>Source of intervention:</b> Domestic	
	<b>Type of measure:</b> Primary legislation	
	<b>Contact for enquiries:</b> <a href="mailto:CTSBill@homeoffice.x.gsi.gov.uk">CTSBill@homeoffice.x.gsi.gov.uk</a>	
<b>Summary: Intervention and Options</b>		<b>RPC Opinion:</b> N/A

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Two-Out?	Measure qualifies as
NK	£0m	£0m	No	N/A

**What is the problem under consideration? Why is government intervention necessary?**

On 29 August the Joint Terrorism Analysis Centre raised the UK threat level from SUBSTANTIAL to SEVERE meaning that a terrorist attack is 'highly likely'. There is a need to legislate to deal with the increased terrorist threat. The Justice & Security Act 2013 introduced the ability for the Home Secretary to certify naturalisation decisions, where refusal relied upon sensitive material. This allowed such decisions to be heard before the Special Immigration Appeals Commission and for the material being heard to be protected. However, the Act did not make provision for sections 18 (1) and 18 (2) of the British Nationality Act 1981 which relates to individuals who wish to naturalise as British Overseas Territories Citizens. Government intervention is required to amend this position.

**What are the policy objectives and the intended effects?**

To replicate the existing measures introduced by the Justice & Security Act 2013 to ensure that the Home Secretary has the ability to protect sensitive material which has been used in reaching a decision to refuse to naturalise an individual as a British Overseas Territories Citizen under S. 18(1) & 18 (2) of the British Nationality Act 1981.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

Option 1 - to make no change.

Option 2 - to amend S.2D of the Special Immigration Appeals Commission (SIAC) Act 1997, so that it now includes the provision for the Home Secretary to certify a decision to refuse to grant British Overseas Territories Citizenship (BOTC). The Justice & Security Act 2013 had already added 2D to the SIAC Act 1997 thereby introducing the power for the Home Secretary to certify certain citizenship applications but did not include BOTC applications. This proposal will add applications to naturalise as a BOTC, as a type of citizenship application that may be certified, so that any challenge to that decision may be heard before the Commission, if sensitive material has been used in reaching the decision.

**Will the policy be reviewed? It will not be reviewed. If applicable, set review date: N/A**

Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro No	< 20 No	Small No	Medium No	Large No
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			Traded: N/A		Non-traded: N/A

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

Signed by the responsible Minister

Date: \_\_\_\_\_

# Summary: Analysis & Evidence

## Policy Option 1

**Description:** Do not amend S.2D of the Special Immigration Appeals Commission Act 1997

### FULL ECONOMIC ASSESSMENT

Price Base Year 2014	PV Base Year 2014	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: 0

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0	0	0
High	0	0	0
Best Estimate	0	0	0

#### Description and scale of key monetised costs by 'main affected groups'

This option is the baseline, so there are no additional costs.

#### Other key non-monetised costs by 'main affected groups'

N/A

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	0	0
High	0	0	0
Best Estimate	0	0	0

#### Description and scale of key monetised benefits by 'main affected groups'

This option is the baseline, so there are no additional benefits.

#### Other key non-monetised benefits by 'main affected groups'

N/A

#### Key assumptions/sensitivities/risks

#### Discount rate (%)

3.5

If this provision is not introduced, then refused applications for BOTC claims relying on sensitive information would still be subject to Judicial Review in the High Court. At this point, the only method available to protect the sensitive material would be Public Interest Immunity, which could result in the complete exclusion of that material. Any judgement reached would not be informed by the sensitive material, even if it was important to defend the case.

### BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: 0	Benefits: 0	Net: 0	No	N/A

# Summary: Analysis & Evidence

## Policy Option 2

**Description:** Amend S.2D of the Special Immigration Appeals Commission Act 1997

### FULL ECONOMIC ASSESSMENT

Price Base Year 2014	PV Base Year 2014	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: NK	High: NK	Best Estimate: NK

  

<b>COSTS (£m)</b>	<b>Total Transition</b> (Constant Price) Years		<b>Average Annual</b> (excl. Transition) (Constant Price)	<b>Total Cost</b> (Present Value)
Low	NK		NK	NK
High	NK		NK	NK
Best Estimate	NK		NK	NK

**Description and scale of key monetised costs by 'main affected groups'**  
N/A.

**Other key non-monetised costs by 'main affected groups'**  
HMG: There will be a cost to government if the cost of holding a judicial review in a closed court exceeds the cost of holding it in an open court. This has not been estimated due to the very small number of cases this is expected to apply to.

  

<b>BENEFITS (£m)</b>	<b>Total Transition</b> (Constant Price) Years		<b>Average Annual</b> (excl. Transition) (Constant Price)	<b>Total Benefit</b> (Present Value)
Low	NK		NK	NK
High	NK		NK	NK
Best Estimate	NK		NK	NK

**Description and scale of key monetised benefits by 'main affected groups'**  
N/A

**Other key non-monetised benefits by 'main affected groups'**  
The Home Office / Security Service: The Government will be able to better protect sensitive material/information in order to safeguard national security.  
Individuals challenging a certified decision: Individuals who are refused British Overseas Territories Citizenship will be able to have all aspects of the Home Secretary's decision, even those that rely upon sensitive material, reviewed independently by the Courts.

Key assumptions/sensitivities/risks	<b>Discount rate (%)</b>	3.5
The estimated number of cases that will arise is based on historical data; it is possible the number of cases may differ in future.		

### BUSINESS ASSESSMENT (Option 2)

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>In scope of OITO?</b>	<b>Measure qualifies as</b>
Costs: 0	Benefits: 0	Net: 0	No	N/A

# Evidence Base (for summary sheets)

## Define the Problem

On 29 August the Independent Joint Terrorism Analysis Centre raised the UK national terrorist threat level from SUBSTANTIAL to SEVERE meaning that a terrorist attack is 'highly likely'. Approximately 500 individuals of interest to the police and security services have travelled from the UK to Syria and Iraq since the start of the conflicts; a number of these individuals have joined terrorist organisations including the Islamic State of Iraq and the Levant (ISIL). On 1 September the Prime Minister announced that legislation would be brought forward in a number of areas to stop people travelling overseas to fight for terrorist organisations, or conduct terrorist related activity, and subsequently returning the UK, and to deal with individuals already in the UK who pose a risk to the public.

A decision to refuse to grant citizenship does not attract a statutory right of appeal and can only be challenged by way of Judicial Review. To ensure that any sensitive material relied upon in such a refusal can be protected during any Judicial Review challenge, the Justice & Security Act 2013 (JSA 2013) introduced the power for the Home Secretary to certify such decisions, so that any challenge to the refusal would be heard before the Special Immigration Appeals Commission (SIAC), where the sensitive material can be protected.

However, the JSA 2013, whilst introducing this ability to certify a number of citizenship decisions, did not make provision for sections 18 (1) & 18 (2) of the British Nationality Act 1981 which relate to individuals who wish to naturalise as British Overseas Territories Citizens (BOTC).

At present, if the Home Secretary wishes to refuse to grant British Overseas Territories Citizenship to an individual based on sensitive information, there is no power in law to protect that sensitive material should the decision be challenged by Judicial Review (unless the material was concerned with issues of national security, so that an application under S.6 of the JSA 2013 could be made to the Courts). The only current method available to the courts to protect sensitive material (that is not covered by S. 6 of the JSA2013) from disclosure in open court is Public Interest Immunity (PII), which can result in the complete exclusion of that material. Any judgement reached is therefore not informed by that material, however important it is in order to defend the case.

The current process is as follows:

- 1) Individual applies to be naturalised as a British Overseas Territories Citizen.
- 2) Decision is made.
- 3) If successful, process ends. If unsuccessful:
- 4) Individual can accept this decision, or challenge.
- 5) If challenging, this is by virtue of the applicant lodging a judicial review. If permission is given by the Courts to allow the challenge then the hearing will usually take place in the Upper Tribunal or occasionally the Court of Appeal. These are OPEN courts, so any sensitive material would not be protected.

Under new measures, the process would be 1)-4), then:

- 5) If challenging, then the applicant may lodge a judicial review, the hearing of which will be before SIAC, where sensitive material would be protected.

## Rationale

Protecting the UK against terrorism is a fundamental role of Government. Counter-terrorism measures require judgments on the need to balance protecting the public with safeguarding civil liberties and dealing with sensitive issues of national security. Such judgments should not be left to the private sector. The private sector does not have the access to intelligence to understand the scale/nature of the threat.

It is the Government that manages sensitive information and intelligence on individuals that pose a terrorist threat and is responsible for the safety and security of UK citizens. Given the necessity of counter-terrorism measures, and the role of the Government to protect the public, the Government is uniquely placed to fulfil this role.

## Objectives

The Government's objectives are to:

- ensure the Home Secretary has the power to protect sensitive material when this has been used in reaching a decision to refuse to naturalise an individual as a British Overseas Territories Citizen under S. 18 (1) & 18 (2) of the British Nationality Act 1981
- ensure that executive power can be properly held to account through independent scrutiny by the courts.

## Options

Option 1 – make no change.

Option 2 – amend S. 2D of the SIAC Act 1997 so that it includes a provision for the Home Secretary to certify a decision to refuse to grant British Overseas Territories Citizenship if sensitive material had been used in making that decision. Any challenge to that decision may then only be made to and heard before SIAC.

## Groups Affected

- The Home Office
- The Special Immigration Appeals Commission
- Security Service
- Individuals challenging a certified decision

## Costs

**HMG:** Very few cases will be affected by this provision. On average there is one BOTC case every one to two years (not all of which may appeal the decision so as to cause the associated costs of defending that decision at appeal). Based on this data, the maximum estimate is one case per year. The additional cost per case will be the difference in cost between hearing a case in an open court compared to a closed court. Due to these low numbers, it is not proportionate to estimate the exact cost difference per case.

**Security Service:** Costs to the Security Service have not been monetised. As it is anticipated that only a small number of cases will be affected by this provision, it is not anticipated that it will incur any substantial additional expense for the Security Service.

**Individuals challenging a certified decision:** Individuals, whose applications for British Overseas Territories Citizenship are refused, will have to apply to SIAC to have the decision in

their case reviewed. The costs to such individuals are not anticipated to vary much, if at all, from the costs an individual seeking to challenge a decision to refuse citizenship on non-sensitive material would incur when seeking a Judicial Review of the matter before the High Court.

## **Benefits**

**Individuals challenging a certified decision:** Individuals who are refused British Overseas Territories Citizenship will be able to have all aspects of the Home Secretary's decision, even those that rely upon sensitive material, reviewed independently by the Courts. Special Advocates will also be appointed where necessary to represent applicants at any hearing from which they and their representatives are excluded.

**The Home Office:** The Home Secretary will be able to take decisions to refuse to grant British Overseas Territories Citizenship with reliance on sensitive material, and be confident that the material will be protected during the course of any review of that decision.

## **Risks**

Option 1: If this provision is not introduced, then refused applications for BOTC claims relying on sensitive information would still be subject to Judicial Review in the High Court. At this point, the only method available to protect the sensitive material would be Public Interest Immunity, which could result in the complete exclusion of that material. Any judgement reached would not be informed by the sensitive material, even if it was important to defend the case.

Option 2: The estimated number of cases that will arise is based on historical data; it is possible the number of cases may differ in future.

## **Implementation**

The government plans to implement these changes shortly after Royal Assent for the Counter Terrorism and Security Bill is received.

## **Monitoring and Evaluation**

The changes will be subject to ongoing review by the Home Office and by SIAC as they begin to progress certified cases through the system.

## **Feedback**

It is anticipated that the Home Office will only use this measure for a small number of applications. The policy will be kept under review by the Home Office.