

CABINET OFFICE

THE CIVIL SERVICE NATIONALITY RULES

Introduction

The Civil Service Nationality Rules concern eligibility for employment in the Civil Service on the grounds of nationality and must be followed by government departments and other bodies within the Home Civil Service and the Diplomatic Service in their recruitment and appointment procedures.

The United Kingdom restricts employment in its Civil Service to nationals of certain countries, but, unlike many other nations, not solely to its own nationals. There is a general statutory prohibition on the employment of aliens in the Civil Service except in certain circumstances. An “alien” is defined as any person who is not a British or Commonwealth citizen, a British protected person or a citizen of the Republic of Ireland. The Civil Service Nationality Rules reflect the statutory provisions on the employment of aliens which are principally contained in the Aliens’ Employment Act 1955.

The eligibility of non-aliens for employment in the Civil Service is governed by the terms of the Civil Service Nationality Rules. In principle, non-aliens are eligible for employment in the Civil Service. However, additional nationality restrictions apply in relation to certain posts due to the sensitive nature of the work undertaken in those posts.

The Civil Service Nationality Rules cover eligibility for employment on the grounds of nationality in the Home Civil Service and the Diplomatic Service. Rules for the Home Civil Service are made by the Minister for the Civil Service under powers conferred by the Civil Service Order in Council 1995 (as amended). Similarly, rules applicable to the Diplomatic Service are made by the Secretary of State for Foreign and Commonwealth Affairs under powers in the Diplomatic Service Order in Council 1991 (as amended). The Civil Service Nationality Rules are issued by the Cabinet Office on behalf of the Ministers referred to above.

Enquiries concerning the application of the Civil Service Nationality Rules should be addressed to the Cabinet Office, Room 2.6, Admiralty Arch (South), The Mall, London, SW1A 2WH (Tel: 020 7276 1636; Fax: 020 7276 1642; e-mail: mike.dawson@cabinet-office.x.gsi.gov.uk).

THE CIVIL SERVICE NATIONALITY RULES

Employment of Aliens in the Civil Service

1. There is a general statutory prohibition on the employment of aliens in the Civil Service.¹ An alien is any person who is not a British or Commonwealth citizen, a British protected person or a citizen of the Republic of Ireland.²

2. There are certain exceptions to this prohibition which are set out in the Aliens' Employment Act 1955 ("the 1955 Act"). Aliens may be employed in the Civil Service only if the terms of the 1955 Act are satisfied.

Overseas Postings

3. The first exception relates to certain overseas postings. An alien may be appointed in any country or territory outside the United Kingdom, the Channel Islands or the Isle of Man to a post of a class or description which appears to the responsible Minister to be appropriate for the employment of aliens. This exception applies mainly to appointments to local staff postings in UK embassies and consulates overseas.

Aliens' Certificates

4. The second exception enables the employment of aliens under cover of an alien's certificate issued by the department concerned, with the consent of the Minister for the Civil Service. The certificate can cover the employment of a particular individual in a specified service, or the employment of aliens generally in a specified service or in service of a specified class or description.

5. An alien's certificate may only be issued in relation to the employment of a particular individual in a specified service if no suitably qualified UK national is available for employment in that service, or if the alien possesses exceptional qualifications or experience for such employment.

6. Certificates covering employment generally in a service or a specified class or description of service may only be issued if no suitably qualified UK nationals are readily available, or available in sufficient numbers for employment in the service or class or description of the service specified in the certificate.

7. If a certificate is issued, the candidate must be given a conditional (nationality) appointment provided that the normal recruitment procedures for the grade are followed and the candidate is eligible in respect of age, health, character, knowledge and ability. In all cases, a certificate is only valid for a period of five years. On its expiry, the responsible Minister may issue a further certificate if the conditions described in paragraphs 5 and 6 above continue to apply. If the candidate

1 Act of Settlement 1700, s.3; Aliens Restriction (Amendment) Act 1919, s. 6.

2 See paragraphs 28 to 39 for further information on the definition of British, Irish and Commonwealth citizens, and British protected persons.

subsequently becomes eligible for permanency, for example through naturalisation, the appointment may be converted to a permanent one.

8. Each financial year, the Cabinet Office lays before each House of Parliament a list containing particulars of all aliens' certificates in force during the previous financial year including the number of aliens employed under such certificates.

Relevant Europeans

9. The third exception provides for the employment of European Economic Area (EEA), Swiss and Turkish nationals (and certain of their family members with free movement rights irrespective of their nationality) to take up employment in the Civil Service except in those posts which constitute "employment in the public service" within the meaning of Article 39(4) of the EC Treaty.

10. The EC Treaty³ secures the free movement of workers within the European Union (EU) and prohibits discrimination based on nationality between workers of the Member States⁴ as regards access to employment. These provisions extend to the EEA and thus to the nationals of Iceland, Norway and Liechtenstein⁵ and to Swiss nationals under an agreement concluded between the EC and Switzerland.⁶ Free movement rights also extend to certain Turkish nationals who acquire these rights under the conditions laid down in a Decision adopted by the EC and Turkey.⁷

11. EEA, Swiss and certain Turkish nationals (and certain of their family members who acquire free movement rights irrespective of their nationality) are eligible for employment in all non-reserved posts in the Civil Service.⁸ They are described in legislation as "relevant Europeans"⁹.

3 Article 39 of the Treaty establishing the European Community can be accessed at: http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/ce321/ce32120061229en00010331.pdf?bcsi_scan_3524BEF1A802DDB8=0&bcsi_scan_filename=ce32120061229en00010331.pdf.

4 The Member States of the EU currently are: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.

5 The EEA comprises the Member States of the EU and three of the Member States of the European Free Trade Association (Iceland, Norway and Liechtenstein).

6 Agreement between the European Community and its Member States of the one part and the Swiss Confederation of the other on the Free Movement of Persons, Luxembourg, 21 June 1999.

7 Decision 1/80 of 19 September 1980 of the Association Council set up by the Agreement establishing an Association between the European Economic Community and Turkey, signed at Ankara on 12 September 1963, OJ No L361/1, 31.12.1977, p.29 (rights of certain Turkish nationals and their family members whatever their nationality, to take up any economic activity).

8 See paragraphs 21 to 27 on the definition of reserved posts.

9 See section 1(1)(c) and (5) of the Aliens' Employment Act 1955 and Articles 3 and 4 of the European Communities (Employment in the Civil Service) Order 1991, S.I. No. 1221.

EEA Nationals

12. EEA nationals comprise nationals of the EU Member States and three of the Member States of the European Free Trade Association (EFTA): Iceland, Norway and Liechtenstein.

13. There are some additional restrictions on the entitlement of Bulgarian and Romanian nationals to enter and work in the United Kingdom during a transitional period to 31 December 2011. These are found in the Accession (Immigration and Worker Authorisation) Regulations 2006.¹⁰ Bulgarian and Romanian nationals are only eligible to work in the Civil Service during this period if the relevant department obtains prior approval for the employment under the work permit arrangements in the Regulations.¹¹

14. In addition, there are certain “light-touch” conditions on the nationals of eight of the ten Member States which joined the EU in 2004 (the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia). Under the Accession (Immigration and Worker Registration) Regulations 2004,¹² non-exempt workers from these Member States generally have to apply for a registration certificate within the first month of their employment in order to continue to work legally in the United Kingdom. Nationals of these eight Member States who are working in the Civil Service will need to observe these rules.¹³

Swiss Nationals

15. Swiss nationals have the same entitlement as EEA nationals to take up employment in non-reserved posts in the Civil Service.

Turkish Nationals

16. For a Turkish national to be eligible for employment in the Civil Service, it is not sufficient that he or she can work legally in the United Kingdom. Free movement rights must have been engaged in order to trigger eligibility for employment in the Civil Service. Free movement rights are only acquired if the individual has been lawfully employed in the United Kingdom for four years in any job, or if they have been lawfully employed for three years in a job within the same “occupation” as the post which they wish to take up within the Civil Service.

10 S.I No. 3317.

11 More detailed guidance on the Worker Authorisation Scheme is available from the Home Office website at:
http://www.workingintheuk.gov.uk/working_in_the_uk/en/documents/all_forms.html.

12 S.I. No. 1219.

13 More detailed guidance on the Workers’ Registration Scheme, and exemptions from the Scheme, is available from the Home Office either online at:
http://www.workingintheuk.gov.uk/working_in_the_uk/en/homepage/schemes_and_programmes/worker_registration.html or on the Employers’ Helpline on 0845 010 6677.

Family Members

17. Certain family members of EEA nationals,¹⁴ who are not themselves EEA nationals, have rights to reside and take up employment in the Member State where that national is employed. The family members concerned are the spouse, registered partner¹⁵, direct descendants (children, grandchildren, etc.) of the EEA citizen or their spouse or registered partner who are under the age of 21 or are dependants, and dependent direct relatives in the ascending line (parents, grandparents, etc.) and those of the spouse or registered partner. These rights may also extend to long-term partners and other dependants where these are lawfully resident in the United Kingdom.¹⁶

18. Certain family members of Swiss nationals resident in the United Kingdom who are not themselves Swiss have rights to reside and take up employment in the Member State where that national is employed. The family members included are: the spouse of the Swiss national, their relatives in the descending line (i.e. children, grandchildren, etc.) who are under the age of 21 or are dependants, their relatives in the ascending line (i.e. parents, grandparents, etc.) who are dependent on the Swiss national and (in the case of a student) the spouse and their dependent children. These family members can work in the United Kingdom and are eligible for employment in non-reserved posts in the Civil Service.

19. Certain family members of Turkish nationals who have freedom of movement rights are also eligible for employment in the Civil Service. Family members of Turkish nationals are only eligible for employment in non-reserved Civil Service posts if they have been lawfully resident in the United Kingdom for three years or more. "Family member" includes the Turkish national's spouse and their descendants (children, including step-children, grandchildren, great-grandchildren) who are under the age of 21 years or are dependants, and dependent relatives in the ascending line (parents, grandparents, great-grandparents) of the worker and his spouse. In order for these rights to be triggered, the family member must have been living¹⁷ in the United Kingdom with the Turkish national who has freedom of movement rights. There are also special rules which entitle Turkish workers' children who have completed a course of vocational training in the United Kingdom to take up jobs in the Civil

14 The family members of a UK national may also be eligible to join the Civil Service if the UK national has triggered his or her freedom of movement rights (normally by working elsewhere in the EEA for a period). If you think that this might be the case, the Cabinet Office must be consulted.

15 The relevant Directive (Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States: http://eur-lex.europa.eu/LexUriServ/site/en/oj/2004/l_158/l_15820040430en00770123.pdf) defines this as a partner with whom an EU citizen has contracted a registered partnership in a Member State, but only if the legislation of the host Member State treats registered partnerships as equivalent to marriage and in accordance with the conditions laid down by the host Member State.

16 Directive 2004/38/EC states that Member States must consider whether to grant residence to those family members who, in the country from which they have come, were a dependant of that national or a member of their household, or where serious health grounds strictly require the personal care of the family members by the EEA national. Member States must also consider whether to grant residence to long-term partners. Where this residence is granted, the individual would be eligible for appointment to the Civil Service..

17 The family member is likely to be required to have been living in the United Kingdom, with the Turkish national who has freedom of movement rights, for three years or more.

Service. There is no length of residence requirement for this right, but one of the child's parents must have been legally employed in the United Kingdom for at least three years.

20. The Cabinet Office should be consulted in the event of any queries regarding the eligibility of a national of any of the above States, or the eligibility of their family members, to take up employment in the Civil Service.

Reserved posts

21. "Employment in the public service" is excluded from the scope of the free movement provisions in Article 39 of the EC Treaty. This enables Member States to reserve for their own nationals Civil Service posts which constitute "employment in the public service". Whilst the EC Treaty itself provides no definition of "employment in the public service", it has been defined by the European Court of Justice generally as those posts involving direct or indirect participation in the exercise of powers conferred by public law and in duties whose purpose is to safeguard the general interest of the State or other public bodies and which therefore require a special allegiance to the State on the part of the persons occupying them.

22. The 1955 Act¹⁸ specifies in detail those public service posts which are to be reserved for UK nationals. These are referred to in the United Kingdom as "reserved posts". Under no circumstances may a relevant European or any other alien be employed in a reserved post.

23. Posts within the security and intelligence services (that is, the Security Service, the Secret Intelligence Service, and the Government Communications Headquarters) are automatically reserved.

24. Other categories of posts are capable of being reserved if that is considered to be necessary (that is, that special allegiance to the Crown is required in respect of that post such that the post must be held by a UK national). These categories of posts are:

- posts within the Defence Intelligence Staff within the Ministry of Defence;
- posts whose functions are concerned with:
 - (i) access to intelligence information received directly or indirectly from the security and intelligence services;
 - (ii) access to other information which, if disclosed without authority or otherwise misused, might damage the interests of national security;
 - (iii) access to other information which, if disclosed without authority or otherwise misused, might be prejudicial to the interests of the United Kingdom or the safety of its citizens;

18 As amended by the European Communities (Employment in the Civil Service) Order 2007 S.I. No. 617.

(iv) border control or decisions about immigration.

25. If a post does not fall within these categories, then it is not capable of being reserved to UK nationals only. This means that any “relevant European” would be eligible to apply for such a post.

26. As stated above, where a post falls within one of the above categories (other than posts in the security and intelligence services) the relevant Minister must consider whether it is necessary to reserve that post for UK nationals only (that is, that special allegiance to the Crown is required in respect of that post such that the post must be held by a UK national). Where the relevant Minister does not consider that to be necessary, the post will not be reserved for UK nationals.

27. In relation to posts within the Diplomatic Service and the Foreign and Commonwealth Office, it has been determined that special allegiance to the Crown is required in respect of these posts such that it is necessary to reserve these posts to UK nationals.¹⁹ Relevant Europeans are not therefore eligible for employment in posts in the Diplomatic Service and the Foreign and Commonwealth Office unless the responsible Minister decides otherwise in relation to a specified post or posts.

Employment of Non-Aliens in the Civil Service

28. Non-aliens, that is, UK nationals, British protected persons, and Irish and Commonwealth citizens, are not prohibited by statute from employment in the Civil Service.

29. However, the following rules and restrictions apply to non-aliens. Departments and other bodies forming part of the Home Civil Service and the Diplomatic Service must ensure that these rules and restrictions are complied with before appointment.²⁰

UK Nationals

30. UK Nationals are in principle eligible for employment in all Civil Service posts. However, departments are entitled to impose additional requirements in reserved posts if this is considered necessary.²¹ This could include, for example, requirements as to the residency of the applicant or the nationality of one or both parents of the applicant.

31. Family members of UK nationals (who are not themselves UK nationals and do not otherwise satisfy the Civil Service Nationality Rules) are not generally eligible to join the Civil Service.²²

19 Additional requirements are imposed in posts in the Diplomatic Service and FCO – see paragraph 32.

20 See the accompanying Guidance on the Civil Service Nationality Rules.

21 See above paragraphs 21 to 27 on the definition of a “reserved post”.

22 Exceptionally, the family members of a UK national who do not themselves meet the Nationality Rules may be eligible to join the Civil Service if the UK national has triggered his or her freedom of movement rights under European Community law (normally by working for a period elsewhere in the EEA). Where a department believes that an individual may be eligible on these grounds, the Cabinet Office must be consulted in the first instance.

32. For posts in the Diplomatic Service and Home Civil Service posts in the Foreign and Commonwealth Office, individuals are only eligible if:

(a) they are a British citizen; and

(b) they have resided in the United Kingdom for at least two of the previous ten years immediately prior to their application, at least one year of which must have been a consecutive twelve-month period, unless they have served overseas with HM Forces or in some other official capacity as a representative of Her Majesty's Government, or have lived overseas as a result of their parents' or partner's government employment. A lack of sufficient background information may preclude them from being granted security clearance.

33. The definition of UK national is set out in the UK Declaration on Nationality, made with effect from 1 January 1983, and comprises: British citizens, British subjects under Part IV of the British Nationality Act 1981 having the right of abode in the United Kingdom, and British Overseas Territories citizens.²³

British Protected Persons

34. The definition of British protected person is determined under the British Nationality Act 1981.²⁴ It is expected that very few candidates will fall into this category. In practice, they will be required to show either a British passport which demonstrates their status as a British protected person or a letter from the Foreign and Commonwealth Office confirming their status.

35. British protected persons are eligible for employment in all non-reserved posts in the Civil Service. They are not eligible for employment in reserved posts.²⁵

Irish Nationals

36. Irish nationals²⁶ are eligible for employment in all non-reserved posts in the Civil Service. They are not eligible for employment in reserved posts.²⁷

37. The family members of Irish nationals are also eligible for employment in non-reserved posts in the Civil Service in the same way as family members of other EEA nationals.²⁸

23 For further details see the accompanying Guidance on the Civil Service Nationality Rules.

24 See in particular sections 50 and 38 of the 1981 Act and the Home Office guidance on British Protected Persons: <http://www.ind.homeoffice.gov.uk/documents/nichapter54/>.

25 See paragraphs 21–27 above on the definition of “reserved post”.

26 For determining citizenship of the Republic of Ireland, see the accompanying Guidance on the Civil Service Nationality Rules.

27 See paragraphs 21–27 above on the definition of “reserved post”.

28 See paragraph 17 above concerning EEA family members.

Commonwealth Citizens

38. A “Commonwealth citizen” is any person who has the status of a Commonwealth citizen under the British Nationality Act 1981. The territories forming part of the Commonwealth are listed in Annex B.²⁹

39. Commonwealth citizens are eligible for employment in all non-reserved posts in the Civil Service. They are not eligible for employment in reserved posts.³⁰ Family members of Commonwealth citizens are not eligible to join the Civil Service if they do not themselves satisfy the nationality rules.³¹

Dual Nationality

40. Individuals with dual nationality are in principle eligible for employment in the Civil Service provided that they meet the requirements of these rules in relation to one of their nationalities. This does not apply however, in respect of those reserved posts where additional nationality requirements are imposed.³²

Race Relations Act 1976

41. The operation of the Civil Service Nationality Rules is excluded from the provisions of the Race Relations Act 1976 by section 75(5) of that Act. The operation of the Rules does not therefore constitute an infringement of that Act. This exception also applies to the bodies listed in Annex E. These bodies are also entitled to apply the Civil Service Nationality Rules.

Stateless Persons

42. Stateless persons are not eligible for appointment to the Civil Service, even if they had past connections with the United Kingdom or the Commonwealth.

Refugees

43. A refugee does not automatically lose his or her nationality. It must either be taken away by the government of the country concerned, or the candidate must have voluntarily renounced it. The Border and Immigration Agency of the Home Office should be consulted in the event of refugee candidates who claim to retain the nationality of origin.³³

29 For determining citizenship of the Commonwealth see also the accompanying Guidance on the Civil Service Nationality Rules.

30 See paragraphs 21– 27 above on the definition of “reserved post”.

31 Except if they are family members of Maltese or Cypriot nationals. As Malta and Cyprus are now also members of the EU, certain of their family members enjoy free movement rights and are therefore eligible for employment in non-reserved posts in the Civil Service. See paragraph 17 above concerning EEA family members.

32 See above in particular paragraphs 30 and 31.

33 For further details see the Guidance on the Civil Service Nationality Rules.