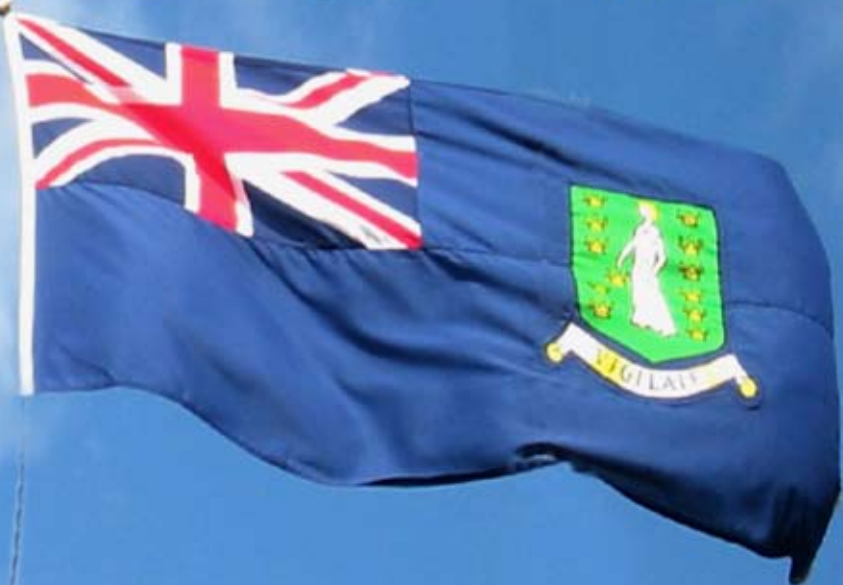




Belonger and Nationality Status in the Virgin Islands (UK)



Questions and Answers



Message from the Registrar General

The purpose of this booklet is to answer questions about Nationality and Belonger status in the Virgin Islands (UK). Being subjected to the laws of both the Virgin Islands and the United Kingdom, this topic is a complex one. It is also an evolving one, with the most recent changes in the Virgin Islands Constitution Order of 2007.

It is hoped that, through this booklet, residents and citizens of the Virgin Islands would develop a better understanding of the laws and how they apply to them. However, the information contained here is not intended to serve as a substitute for one-on-one guidance provided by the appropriate official or authority.

I express my gratitude to the Deputy Governor, Mr. Elton Georges, CMG, OBE, for his invaluable contribution to this publication.

*Mrs. Stephanie Benn
Registrar-General
January 2008*

Definitions and Abbreviations

BOTC: British Overseas Territories Citizen

BNA: British Nationality Act

BVI: The Virgin Islands

Belonger: A "person deemed to belong" or a "person who belongs to the Virgin Islands."

British Subject: An old term, which now means "Commonwealth Citizen".

CUKC: Citizen of the United Kingdom and Colonies

Commonwealth Citizen: A person who is a national of any of the 53 countries in the Commonwealth. Many of these countries were at one time British territories or protectorates. You can find a list of Commonwealth countries at www.thecommonwealth.org.

I&P Ordinance: Immigration and Passport Ordinance

Immigration Status: The rights you have to enter and stay in the BVI, as

well as your rights to work, own land, vote, etc. Generally speaking, there are four categories of immigration status in the BVI: *belonger*, permanent resident (holder of a certificate of residence); temporary resident (whether in employment or not); visitor/tourist.

Nationality Status: Your citizenship. Your nationality status determines which passport(s) you carry.

Naturalization: The process by which adults can become British Overseas Territories Citizens. It correlates with registration for children.

Registration: The process by which children under 18 can become British Overseas Territories Citizens. It correlates with naturalization for adults.

Settled: You are a *Belonger* or hold a certificate of residence, or are otherwise free from the control of immigration officers regarding the length of time you can remain in the Territory.

Belonger Status

1. What does the word *belonger* mean?

Belonger is the short form for the phrase “person deemed to belong” or “person who belongs to the Virgin Islands”.

2. Who is deemed to belong to the Territory?



Naturalization Ceremony

Under the present law (the Constitution Order, 2007), there are several categories or classes of persons deemed to belong:

(A) A person born within the BVI whose father or mother is (at the time of the birth):

- a BOTC by birth, naturalization or registration in the BVI; or
- a person settled in the BVI. (i.e., belongs or holds a certificate of residence granted by Cabinet); or
- a *belonger* by birth or descent (i.e., having at least a grandparent born in the BVI)

(B) A person born outside of the BVI to a father or mother who is a *belonger* or a BOTC by having been born in the BVI.

(C) A person who was at any time granted a certificate that he or she was deemed to belong under the I&P Ordinance and such certificate not

having been revoked under the Ordinance (Sections 16 and 17 of present Ordinance.)

- (D) A person who became a BOTC by registration under the BNA
- (E) Persons who on 14 June, 2007, belonged to the BVI by operation of the Constitution up to that time.

Please note that slightly different definitions applied under the previous (1976) Constitution.



Registration Ceremony

3. Are any other persons deemed to belong?

Yes.

- Under the Immigration and Passport Ordinance of 1946, any British subject (Commonwealth citizen) who was ordinarily resident in the Colony (as it was then called) continuously for a period of seven years or more, and was not ordinarily resident in another part of the British Empire for seven years or more was deemed to belong. (That Ordinance was repealed in 1969, but persons who obtained the status kept it. The number of persons deemed to belong under this provision is quite small).
- Children adopted in the Territory by a person who belongs to the Territory by birth or descent also belong.

4. Are children born in the Territory deemed to belong?

In some cases, yes, but it depends on the status of a parent. See 2(A) for details. If the child does not belong at birth but continues to reside in the Territory, he or she can later become a believer under the I&P Ordinance or by registration as a BOTC under the BNA.

5. Is it possible to be a believer but not a British Overseas Territories citizen?

Yes. Belonger status (also permanent resident) is sometimes referred to as one's immigration status, whereas the question as to whether one is a British (or Barbadian, or Haitian, or any other national) is referred to as his or her nationality status.

6. Does it work the other way around? Can one be a BOTC/BVI, but not a believer?

Yes. A person who has a certificate of residence but is not deemed to belong can be naturalised to become a BOTC under the BNA 1981, but since June 2007 does not automatically have believer status conferred. They may later

apply under the I&P Ordinance. Generally speaking, though, most persons who became BOTCs/BVI before 2007 are also belongers.

7. Does a child automatically become a belonger when the parent becomes one, say, by grant of a certificate?

No. The child must acquire it by registration under the BNA or apply independently when he or she reaches the age of 18.

8. Can a person born outside the Territory inherit belonger status by descent through either parent?

Yes. The child belongs by descent.

9. Can a person become a belonger through marriage?

Not directly, although marriage to a belonger shortens the time that a non-belonger must wait before he or she is eligible to apply for belonger status under the I&P Ordinance. The spouse of a belonger may apply for the certificate after both spouse and belonger have resided in the Territory as husband and wife for five years only, rather than a much longer period as required for other applicants.

Nationality

10. What is a Commonwealth citizen?

A Commonwealth citizen is a national of any of the 53 countries in the Commonwealth. Most of these countries were at one time British territories or protectorates. Wherever the term British subject is used in the constitution or laws of the BVI, it should now read Commonwealth citizen. A British Overseas Territories citizen (BOTC) is also a Commonwealth citizen.

11. What is a British Overseas Territories citizen (BOTC)?

A BOTC is a category of British nationals created by the 2002 amendment to the British Nationality Act (BNA) 1981 to describe the persons who are British through a connection with a British Territory. This connection could be by birth, descent, naturalization or registration. (British) Virgin Islanders are BOTC, so are Anguillans, Montserratians, Bermudians, Turks and Caicos Islanders and others.

12. What were we called before?

Prior to 1 January, 2002 all citizens of British (UK) Territories were called British Dependent Territories Citizens. When the BNA 1981 came into effect, all citizens of British (U.K.) Territories were called Citizens of the United Kingdom and Colonies (CUKC) a term introduced by the BNA 1948. All nationals of Great

Britain were called the same. Up to 31 December, 1982, all persons born in the Territory became, at birth, citizens of the United Kingdom and Colonies.

13. What happened to Citizens of the United Kingdom and Colonies (CUKC) on 1 January, 1983?

They became either British citizens or British Overseas Territories citizens (BOTC). In the case of those connected to the BVI, they became BOTC/BVI.



Naturalization Ceremony

14. Does a person become a BOTC by birth in an overseas Territory (OT)?

Not by birth alone; it also depends on the status of your parents. Since 1 January, 1983 you do not become British by birth on British soil only. A child born in the BVI in 1983 or beyond would be a BOTC at birth only under the following:

1. One of its parents was a BOTC; or
2. One of its parents was settled in the BVI.

To be regarded as settled, the parent must reside in the BVI and

1. Be a believer; or
2. Hold a certificate of residence under the Immigration and Passport Ordinance; or
3. Be otherwise free from the control of immigration officers regarding the length of time he or she can remain in the Territory.

15. What happens to a child born in the BVI but who does not become a BOTC at birth?

That child takes the nationality of his or her parent(s). In time, if he or she remains in the Territory, he or she is entitled to be registered to become a BOTC. The Governor has the discretion to register any child (under 18) who is in the Territory at any time.

16. When is a child (a person under the age of 18) who was born in the BVI entitled to be registered as a BOTC on application?

- a) If the child resides in the BVI for the first 10 years of his or her life and was not outside the BVI for more than 90 days in any one of those

years, he or she can be registered as a BOTC.

- b) If at any time after the child's birth, the father or mother is granted a certificate of residence or gets belonger status, the child can be registered as a BOTC.

17. When is a child (a person under the age of 18) who was born outside the BVI entitled to be registered as a BOTC on application?

This can be determined by (1) the nationality of the parent and, in some cases, the grandparent; (2) the parents' period of residence in the BVI; and (3) the date by which the application for registration is made. For detailed information, contact the Civil Registry and Passport Office.

18. How do I register my child as a BOTC?

The parents or guardians must collect the application forms at the Passport



Office, Central Administration Building, and comply with the instructions. An officer may interview and counsel the applicants. If the child is entitled to be registered as a BOTC under section 15 of the BNA 1981, no decision by the Governor is needed. The certificate is prepared by the Passport Office once it determines the entitlement.

Applications for the Governor's discretion are sent to the Governor's Office when the application forms are completed correctly. They are sent to the Governor who then decides whether to grant the certificate. If it is granted, the Passport Office prepares the certificate and invites the parent/guardian to collect it. The child is now a BOTC. (Application forms would be available at other outlets and on the Internet in the future).

If the child is entitled to be registered as a BOTC under Section 15 of the BNA 1981, no decision by the Governor is needed. The certificate is prepared by the Passport Office once it determines the entitlement.

19. How does an adult become a BOTC?

Any adult who is settled in the Territory can apply to the Governor for a certificate of naturalization if they meet certain requirements. If granted, the certificate will confer the status of British Overseas Territories citizenship (BVI) on the holder. The process is similar to that for registration; however, applicants need to meet specific residence and immigration requirements. They are usually required to

advertise the fact of their application and invite persons who know of reasons why naturalization should not be granted to write to the Governor.

20. Can either parent pass on nationality status?

Yes. It is now the case that a child born overseas of a BOTC father or mother would be a BOTC by descent. (Up to 30 June, 2006, this applied only in the case of the father if he was married to the mother). Before 1983, however, only through the father could British nationality be passed on. In either case, if the parents marry later, it could legitimize the child, and he or she could then get the father's status.

21. Why is there apparent discrimination against children born to unmarried mothers?

It is an old feature of British law and the law of many countries, but is changing. The BNA 1981 has removed it as of 1 July, 2006 in the case of 'inheriting' nationality through a father not married to the mother, so long as sufficient evidence of paternity is provided and parental consent has been given.

Case Studies

Case 1:

The child born in the BVI in 1981 to a BVI (belonger) father and a Vincentian, non-belonger mother, who are not married.

Child was British (BOTC) by birth and a belonger at birth and for life.

Case 2:

The same mother and father in Case 1 give birth to a second child in 1984. The couple is still not married.

Child is a Commonwealth citizen (Vincentian) through his mother and a belonger by birth, but not a BOTC. Father's status does not count. Child must be registered to become a BOTC.

Case 3:

A child is born in St. Thomas in 1975 to a BVI mother and BVI father who are not married.

Child is a U.S. citizen by birth and a belonger by descent from the parents. The child is not a Commonwealth citizen or a BOTC. The child's belonger status will lapse at age 18 unless the child is registered as a BOTC, or naturalized after age 18 to become a BOTC.

Case 4:

A married couple consisting of a Kittitian, non-belonger, non-BOTC father and a belonger, BOTC, BVI mother have several children:

Child A born in BVI at any time is a Belonger and a BOTC for life.

Child B born in Puerto Rico in 1982 was a US citizen at birth. She was also a CUKC by descent from the father and therefore became a BOTC on 1 January, 1983. On 1 September, 1983, when St. Kitts and Nevis became independent, the child retained his BOTC status by virtue of his mother's connection to the BVI. Child B was also a Belonger at birth, through mother, for life.

Child C born in St. Thomas in 1985 is a Belonger and a BOTC for life by descent from the mother. (The child is a Kittitian national also by descent from father and an American by birth on US soil.)

Case 5:

A married couple, both citizens of the Dominican Republic, is temporary residents of the BVI.

Child No. 1, born 1980 in the BVI, is British by birth (also a Commonwealth citizen) and a Belonger for life.

Child No. 2 born February 1983 is not a BOTC and not a Belonger by birth since neither parent is a Commonwealth citizen. If either parent obtains a certificate of residence, Child No. 2 would then be entitled, on application, to be registered as a BOTC. If not, the child would be entitled to be so registered on attaining the age of 10, and upon registration, he or she becomes a Belonger.

Resources

Which laws govern Immigration, Belonger and Nationality matters?

- The British Nationality Act 1981 and certain regulations thereunder and the Overseas Territories Act 2002 govern British and British Overseas Territories Citizenship matters.
- The Virgin Islands Constitution Order, 2007 states who is a Belonger.
- The Immigration and Passport Ordinance, Cap 130, and the Immigration and Passport Regulations 1969, sections 19-24, empower the Cabinet to grant certificates of residence and certificates that one belongs, to qualified applicants.

What departments or agencies administer these laws?

The Civil Registry & Passport Office receives applications for the following:

- a) Naturalization and registration as BOTC;
- b) Declarations for persons who are claiming to be deemed to belong to the Virgin Islands;
- c) Passports (British and BOTC).



Naturalization Ceremony

After the necessary checks, interviews, consultation and collection of fees, the Civil Registry and Passport Office issues passports and belonger identification cards. Applications for naturalization and registration are forwarded to the Deputy Governor and, in most cases, to the Governor for further review. Certificates of naturalization are usually presented by the Governor in a ceremony.

The Immigration Department accepts applications from any person applying for a certificate of belonger status under the Immigration and Passport Ordinance.

Contact Information

For more information, please contact:

The Civil Registry & Passport Office
Central Administration Building
Road Town, Tortola VG 1110
Virgin Islands (UK)

Tel. 284 468-3701 ext. 3035 or 468 3442
Fax 284 494-4435/4-2783

The Deputy Governor's Office
Central Administration Building
Road Town, Tortola VG 1110
Virgin Islands (UK)

Tel: 284 494-0346 or 468-3701 ext. 2195
Fax: 284 494-6481
Website: www.dgo.gov.vg

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