



Tonga

NATIONALITY ACT

Chapter 25.06

2016 Revised Edition



NATIONALITY ACT

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NATIONALITY ACT

AN ACT RELATING TO TONGAN NATIONALITY AND NATIONALIZATION¹

Commencement [20th November, 1915]

1 Short title

This Act may be cited as the Nationality Act.

PART I - NATIONALITY

2 Persons deemed Tongan subjects²

The following persons shall be deemed to be Tongan subjects —

- (a) any person born in Tonga to a Tongan parent;
- (b) any person born abroad of a Tongan father;³
- (c) any person born abroad of a Tongan mother;
- (d) any non-Tongan who marries a Tongan provided that he —
 - (i) lodges a written declaration with the Minister of Foreign Affairs that he wishes to assume Tongan nationality; and
 - (ii) takes the oath of allegiance prescribed by this Act; and
- (e) any person naturalized under this Act.

3 *Repealed by Act 3 of 2007⁴*

4 *Repealed by Act 3 of 2007*

5 *Repealed by Act 3 of 2007*

6 *Repealed by Act 3 of 2007*

7 *Repealed by Act 3 of 2007*

PART II - NATURALIZATION

8 Naturalization of non-Tongans⁵

- (1) The King may grant a certificate of naturalization to any foreigner who makes application for the purpose and satisfies His Majesty —
 - (a) that he has resided in Tonga for a period of not less than 5 years;
 - (b) that he is of good character and has an adequate knowledge of the Tongan language;
 - (c) that he intends if his application be granted to reside in the Kingdom.
- (2) The grant of certificates of naturalization shall be in the absolute discretion of His Majesty.
- (3) A certificate of naturalization shall not take effect until the applicant has taken the oath of allegiance.
- (4) In the case of a woman who was a Tongan subject previous to her marriage with a non-Tongan and whose husband has died or whose marriage has been dissolved, the requirements of paragraph (a) of subsection (1) of this section as to residence shall not apply.

8A Special list of naturalized subjects⁶

- (1) Notwithstanding anything contained in section 8(1) of this Act all persons identified in the Schedule published in the Tonga Government Gazette Extraordinary No. 3 dated Friday 15th February 1991 as persons whom the Privy Council wishes to have declared naturalized shall be deemed for all purposes to have become naturalized subjects of Tonga on the dates respectively shown in the last column of the said Schedule opposite their

names. Certificates of Naturalization in such form as shall be prescribed by the Prime Minister shall be issued to them accordingly.

- (2) All persons who are referred to in subsection (1) shall subject to the provisions of the Constitution of Tonga and of this Act be and shall be deemed from the dates aforesaid to have been entitled to all rights and privileges and subject to all the obligations, liabilities and duties as are referred to in section 9 of this Act with the same proviso.
- (3) The provisions of sections 11 and 13 of this Act shall apply to certificates of naturalization issued in pursuance of subsection (1) which for these purposes, shall be treated as though they had been granted by the King in pursuance of section 8(1) of this Act.
- (4) Where it appears to the King that the inclusion of any person named in the Schedule referred to in subsection (1) has been procured by or has resulted from any mistake, false representation or fraud he may order the annulment of his naturalization and the revocation of any certificate of naturalization issued to him. The order of annulment and revocation shall have effect from such date as the King shall direct. The provisions of section 12(2) of this Act shall apply to any certificate which is revoked as aforesaid.

8B Protected persons etc. may become naturalized⁷

- (1) Notwithstanding anything contained in section 8(1) of this Act, a person —
 - (a) who has been the holder of a Tongan Protected Person Passport or of a Tongan National Passport before the 22nd August 1996;
 - (b) who has been the holder of a Tongan Protected Person Passport or of a Tongan National Passport for at least 5 years after the 22nd August 1996; or
 - (c) on humanitarian grounds,may apply to his Majesty to become a naturalised subject of Tonga.
- (2) All applications under subsection (1) shall be accompanied by a fee which is determined by Cabinet. Such fee less the administration costs shall be refunded if naturalisation is not granted.⁸
- (3) If approved, and after taking the oath of allegiance, the names and particulars of such person shall be published by notice in the Gazette and declared to be a naturalised subject of Tonga as from the date specified in such notice. A Certificate of Naturalisation in the prescribed form shall be issued to such person accordingly.

9 Effect of certificate of naturalization

A person to whom a certificate of naturalization has been granted by the King shall subject to the provisions of the Constitution of Tonga and of this Act be entitled to

all rights and privileges and be subject to all the obligations, liabilities and duties to which a natural born Tonga subject is entitled or subject to; and as from the date of a natural born Tonga subject:

Provided that he shall not be entitled to a grant of hereditary tax allotment or town allotment.⁹

10 Special certificate in case of doubts

The King may in his absolute discretion in such cases as he deems fit grant a special certificate of naturalization to any person with respect to whose nationality as a Tongan subject a doubt exists and he may specify in the certificate that the grant thereof is made for the purpose of quieting doubts as to the right of the person to be a Tongan subject and the grant of such special certificate shall not be deemed to be any admission that the person to whom it was granted was not previously a Tongan subject.

11 Persons under disability

- (1) Where a non-Tongan obtains a certificate of naturalization, His Majesty may if he thinks fit on the application of that non-Tongan include in the certificate the name of any child of that non-Tongan born before the date of the certificate and being a minor under 16 years of age and that child shall thereupon become a Tongan subject.
- (2) The King may in his absolute discretion in any special case in which he thinks fit grant a certificate of naturalization to any minor although the conditions required by this Act have not been complied with.

12 Revocation of certificate of naturalization

- (1) Where it appears to the King that a certificate of naturalization granted to any person has been obtained by false representation or fraud he may order the revocation of the certificate and the order of revocation shall have effect from such date as the King may direct.
- (2) In addition to any sentence imposed by a court, His Majesty, with the consent of the Privy Council, may revoke a person's certificate of naturalization if the person is convicted of any of the following offences —
 - (a) terrorism;
 - (b) treason;
 - (c) sedition;
 - (d) any offence which involves dishonesty or fraud;
 - (e) defamation of the King or Queen; or

- (f) any other offence which carries a sentence of 2 or more year's imprisonment.¹⁰
- (3) His Majesty, with the consent of the Privy Council, may revoke a certificate of naturalization if, on reasonable grounds, a person constitutes a threat to the security of the Kingdom.¹¹
- (4) Where a certificate of naturalization is revoked the King may order the certificate to be given up and cancelled and any one refusing or neglecting to give up the certificate shall be liable on conviction to a fine not exceeding \$500.¹²

13 Effect of inclusion of child in a certificate of naturalization

Where in pursuance of this Act the name of a child is included in a certificate of naturalization granted to his parents such child shall for the purposes of this Act be deemed to be a person to whom a certificate of naturalization has been granted.

14 Oath of allegiance

The oath of allegiance shall be in the following form and shall be sworn before the Prime Minister or if authorised in writing by the Prime Minister, a Minister or a diplomatic or consular officer —

“I A. B. swear by Almighty God that I will be faithful and bear true allegiance to His Majesty the King his heirs and successors according to the Law and Constitution of Tonga.”¹³

PART III - GENERAL

15 Administration and power to make regulations

The Prime Minister shall be charged with the administration of this Act and he may with the consent of the Privy Council make such regulations as he deems fit for carrying into effect its provisions.

16 Registers to be kept¹⁴

- (1) There shall be kept and maintained in such manner as may be approved by the Prime Minister —
- (a) a register of persons who have resumed Tongan nationality;
 - (b) a register of persons who have been granted certificates of re-admission to Tongan nationality;

- (c) a register of persons who have been granted certificates of naturalization;
 - (d) a register of persons who have been granted special certificates of naturalization.
- (2) The registers specified in subsection (1) are open to public inspection upon payment of the prescribed fee.
 - (3) Any entry in a register shall be *prima facie* evidence of the matters stated therein.

17 Savings¹⁵

- (1) Any person who ceased to be a Tongan subject prior to the enactment of the Nationality (Amendment) Act 2007,¹⁶ may apply to the Minister for Foreign Affairs for a certificate of re-admission to Tongan nationality in the manner to be prescribed by regulations.
- (2) The requirements of section 8(1)(a) and (c) as to residence in the Kingdom shall not apply to an applicant for a certificate of re-admission.
- (3) The Minister for Foreign Affairs shall grant or withhold a certificate of re-admission in accordance with this Act.
- (4) A certificate of re-admission shall not be issued until the applicant has taken the oath of allegiance in the manner to be prescribed by regulations.
- (5) Sections 11, 12 and 13 shall apply to a person to whom a certificate of re-admission has been granted, as if the grant is of a certificate of naturalization.

ENDNOTES

¹ 1988 Revised Edition Cap. 59 — Acts 6 of 1915, 11 of 1935, 7 of 1959, 4 of 1961, 5 of 1961, 20 of 1984, 30 of 1988, 46 of 1988

Amending Acts	Commencement
Act 2 of 1991	26 th February 1991
Act 6 of 1996	26 th August 1996
Act 13 of 2000	1 st January 2001
Act 3 of 2007	14 th August 2007
Act 9 of 2010	21 st May 2010
Act 42 of 2010	24 th May 2010

² Substituted by Act 3 of 2007 (formerly Substituted by Act 7 of 1959 and Amended by Act 13 of 2000)

³ In the case *R v Schaumkel* (2012 Appeal Case AC 19/2011) the Court of Appeal decided that the effect of this provision was that a person became a Tongan subject when this provision came into force - if born at any time of a Tongan father

⁴ Before their repeal, sections 3-7 provided as follows —

3 Status of Children

- (1) Where a male person being a Tongan subject ceases to be a Tongan subject every child of that person under the age of 16 years shall thereupon cease to be a Tongan subject unless that child or that person ceasing to be a Tongan subject does not become by the law of any other country naturalized in that country.
- (2) Any child who has so ceased to be a Tongan subject who within one year after attaining the age of 16 years forwards a declaration in writing to the Minister of Foreign Affairs that he wishes to resume Tongan nationality shall thereupon again become a Tongan subject.

4 Loss of Tongan Nationality

- (1) A Tongan subject who when in any foreign State and not under disability by obtaining a certificate of naturalization or by any other voluntary and formal act becomes naturalized therein shall henceforth be deemed to have ceased to be a Tongan subject.
- (2) A female Tongan subject who marries a non-Tongan, and exercises her right to acquire the nationality of her husband, and does in fact acquire the nationality of her husband, shall cease to be a Tongan subject from the date on which she acquires foreign nationality.

5 Effect of alienage

Where any Tongan subject ceases to be a Tongan subject he shall not thereby be discharged from any obligation, duty or liability in respect of any act done before he ceases to be a Tongan subject.

6 Acquisition of Tongan nationality by a statutory non-Tongan

Any statutory non-Tongan on performing the same conditions and adducing the same evidence as is required in the case of any ordinary non-Tongan applying for a certificate of naturalization may apply to the King for a certificate of re-admission to Tongan nationality; and the King shall have

absolute discretion as to granting or withholding the same and previous to the issue the non-Tongan must take the oath of allegiance. A Statutory non-Tongan thus re-admitted to Tongan nationality shall resume the status of a Tongan subject from the date of the certificate of re-admission but not in respect of any previous transaction, with the qualification that he is not deemed a Tongan subject in the foreign State of which he became a subject unless he has ceased to be a subject of that State in accordance with its laws or in pursuance of a Treaty.

7 Children of persons re-admitted to Tongan nationality becomes Tongan

Where a person has obtained a certificate of re-admission to Tongan nationality under section 6 hereof every child of such person who before he reaches the age of 16 years has become resident in Tonga with such person shall be deemed to have resumed Tongan Nationality.

⁵ Amended by Acts 20 of 1984, 30 of 1988 and 2 of 1991

⁶ Inserted by Act 2 of 1991

⁷ Inserted by Act 6 of 1996

⁸ Amended by Act 42 of 2010

⁹ Amended by Act 4 of 1961

¹⁰ Inserted by Act 9 of 2010

¹¹ Inserted by Act 9 of 2010

¹² Amended by Act 30 of 1988 and 9 of 2010

¹³ Amended by Acts 6 of 1996 and 3 of 2007

¹⁴ Inserted by Act 30 of 1988

¹⁵ Inserted by Act 3 of 2007

¹⁶ 14 September 2007