



Project for the Registration of Children as British Citizens (PRCBC)
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WORKSHOP 2: British Citizenship by Entitlement 19 September, 2-4:30pm

What are main legal sources when advising and representing on British citizenship matters?

Legislation

1. British Nationality Act 1981
2. British Nationality (General) Regulations 2003, SI 2003/548 (as amended)
3. British Nationality (Proof of Paternity) Regulations 2006, SI 2006/1496 (as amended)
4. Immigration and Nationality (Fees) Order 2016, SI 2016/177 (as amended)
5. Immigration and Nationality (Fees) Regulations 2018, SI 2018/330 (as amended)

Relevant caselaw

1. *Ali v SSHD* [2007] EWHC 1983 (Admin) (discretion and parent not settled)
2. *FI v SSHD* [2014] EWHC 2287 (Admin) (section 55 best interests)
3. *Williams v SSHD* [2015] EWHC 1268 (Admin); [2017] EWCA Civ 98 (Article 8 ECHR, citizenship fee)
4. *SA v SSHD* [2015] EWHC 1611 (Admin) (good character, children)
5. *Poloko Hiri v SSHD* [2014] EWHC 254 (Admin) (good character, adult)
6. *BE (unreported)* [2015] EWHC 905 (Admin)
7. *MM v SSHD* [2015] EWHC 3513 (Admin) (children born in the UK and stateless)
8. *Genovese v Malta* (Application no. 53124/09) (Article 8 ECHR)
9. *Johnson v SSHD* [2016] UKSC 56 (discrimination, illegitimacy and good character)
10. *PRCBC, O & A v SSHD* [2019] EWHC 3536 (Admin) (citizenship fee)

Other relevant sources

Nationality Guidance (also worth looking at now archived Nationality Instructions Volumes 1 and 2¹)

¹ <https://webarchive.nationalarchives.gov.uk/20160811041412/https://www.gov.uk/topic/immigration-operational-guidance/nationality-instructions>



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When is a person automatically a British citizen?

Before an application to register a child as a British citizen is considered, it is important to establish whether the child might already be a British citizen (e.g. by birth).

The following are examples of when a child is already a British citizen:

1. A child born in the UK to a British or settled mother or **father**²;

**** Definition of “father” if child born before 1/7/2006 out of wedlock****

**** Definition of father if mother married to another man at the time of child’s birth****

2. A child born in the UK **on or after 13 January 2010** if at the time of the birth father or mother is a member of the **armed forces**³;

**** Definition of armed forces ****

**** Definition of “father” if mother married to another man****

3. A new-born infant found abandoned in the UK is treated as born in the UK and born to a British parent unless it can be disproved⁴;

4. A child adopted by way of a UK court order or under a Convention adoption and where one or both the adoptees are British citizens and both adoptees are habitually resident in the UK⁵ will be a British citizen from the date of the adoption;

5. A child **born outside the UK** is a British citizen if at the time of birth, the mother or **father** is a British citizen so long as that parent’s British citizenship is otherwise than by descent⁶.

**** Definition of “father” before 1/7/2006**

**** Definition of “father” if child born before 1/7/2006 out of wedlock****

**** Definition of descent is provided under section 14 BNA 1981 ****

ENTITLEMENT

When does a person have a right to apply to register as a British citizen by entitlement?

2 s1 (1) BNA 1981

3 s1A, see also s50(1) for definition of armed forces

4 s1 (2)

5 s1 (5A), see s50(1) for definition of Convention adoption

6 s2. See s14 for definition of “descent”

Some children have an **entitlement** to apply to register as British citizens. This means that where a child meets certain criteria under the British Nationality Act 1981, on a valid application to register, other than where the child does not meet the good character requirement⁷, the child **must be** registered and there is normally **no discretion** for the Home Office to refuse registration.

The following are some of the ways that children may have an entitlement to apply to register:

1. A child **born in the UK** whose father and/or mother is later **granted settled status or is naturalised/registered as a British citizen**;⁸
2. A person born in the UK who (a) is and has always been stateless; (b) has lived for 5 continuous years in the UK up to the point at which an application to register is made; and (c) is under 22 years of age.

A person is considered stateless because s/he is “not considered as a national by any State under the operation of its law” (1954 Statelessness Convention). The ability to acquire a nationality is irrelevant for these purposes.⁹

3. A child (or adult) who was **born in the UK** and has remained here for his/her first **ten years** without **an absence** of more than 90 days¹⁰¹¹ in any one of those ten years is entitled to be registered as a British citizen.

In relation to section 1(4) registration by entitlement, section 50(10) applies for calculating a period of absence. There is a discretion under section 1(7) of the Act to allow absences of more than 90 days in any one or more of the first 10 years of the person’s life in special circumstances.

The Home Office Nationality Guidance for children describes how this will be assessed. This states as follows:

“The number of days absent from the UK in any one of the years does not exceed 180 days and the total number of days over the 10-year period does not exceed 990 days

- the number of days absent exceeds 180 or 990 respectively but was due to circumstances beyond the family’s control, such as a serious illness

You must not waive excess absences over 180 days in a single year or 990 days in the 10-year period where:

- the applicant was unaware of the requirements
- the parents’ absences with the child were entirely voluntary”

7 s41A BNA 1981

8 1(3)

9 This definition of statelessness and its application has been considered by the High Court in *R (MK – a child by her litigation friend CAE) v Secretary of State for the Home Department* [2017] EWHC 1365 (Admin), par 35

10 s1(4)

11 Section 1(7). See also UKVI Nationality Guidance for children

4. A child **born in the UK** on or after **13 January 2010** and one of his parents becomes a member of the **armed forces**.
5. A child **born outside the UK to a British citizen 'by descent'** can be registered on grounds of the **British parent's residence in UK for more than three years prior to the child's birth (s3(2))** or on grounds of the **British parent and child's residence in UK for more than three years following the child's birth (s3(5))**.

Registration under s3(2) gives British citizenship 'by descent' only, while registration under s3(5) gives British citizenship 'otherwise than by descent'.

6. **An illegitimate child/adult born before 1 July 2006** can register by entitlement if the person would have been a British citizen (or would be permitted to register by entitlement) if she, he or they had not been born out of wedlock. Section 65 of the Immigration Act 2014 came into force on 6 April 2015. This section inserted sections 4(E)-(4J) into the British Nationality Act 1981.

Following the commencement of the British Nationality Act (Remedial) Order 2019, SI 2019/1164, s41A of the British Nationality Act has been amended. There is **no longer a good character** requirement for registration applications being made under these provisions.

The British Nationality (General) Regulations 2003 as amended at various times ¹²

It cannot be emphasised enough that practitioners need to be conversant with these regulations as they prescribe the application requirements in nationality applications, such as:

1. Manner of application for registration and naturalisation applications
2. Biometric requirement and procedure; and consequences of not submitting to biometrics
3. Citizenship oath and ceremony arrangements, conduct including exemption
4. Notice of deprivation of citizenship
5. Cancellation of citizenship etc

What form, fee and evidence to submit with a registration application?

Paragraph 1 of Schedule 1 of the General Regulations confirms that an application shall be made in writing and must include name, address, date and place of birth of the applicant. Paragraph 2 confirms that the application must contain a declaration that the particulars stated therein are true. Prescribed application forms in registration and naturalisation are therefore not mandatory. However, it would be best to ensure that the relevant and current form is used. This will ensure that all the necessary information, as required by the

¹² SI/2003/548. These statutory provisions are made under s41 (1) and (3) of BNA 1981

Regulations¹³ is provided to the Home Office and should avoid delay and reduce the risk of any refusal or decision to treat the application as invalid.

Form MN1¹⁴ for registration applications made under s1(3), s1(3A), s3(1), s3(2), s3(5) and s4F

Form T¹⁵ for registration applications made under s1(4)

UKF for registration applications made under s4G

UKM for registration applications made under s4C

Consent of parents/guardian

Consent may be waived by the Home Office in certain circumstances, such as in cases of no contact with parent(s) or where the parent(s)' whereabouts are unknown. The issue of consent may also depend on the age of the child. General guidance can be found on page 38 of the Nationality Guidance – Registration as British citizen: children.¹⁶

Application registration fee

The current prescribed application registration fee is £1,012 for each child¹⁷ and £1,206 (this includes £80 citizenship ceremony fee) for registration of adults. There is also an £80 citizenship ceremony fee for those children who have turned 18 when the decision is made.

There is no fee waiver or reduction on a registration application fee for those children who cannot afford to pay this very high fee – not even for the many such children who have a right to register by entitlement. There is also no fee exemption for those children being looked after by a local authority. According to the Home Office transparency data, it costs **£372** to process a child's registration application. This means the Home Office makes **a profit of £640 on a child's entitlement to register.**

However, applications made under sections 4C and 4G (also 4H and 4I) are exempt from the fee – see the meaning of "*application for registration as a British citizen under the 1981 Act*" given in paragraph 1 of Schedule 8 to the Immigration and Nationality (Fees) Regulations 2018, SI 2018/330 (as amended).

13 Schedule 1, Part 1, par 1-4, British Nationality Regulations 2003 SI/2003/5488

14 <https://www.gov.uk/government/collections/uk-visa-forms#citizenship>

15 <https://www.gov.uk/government/publications/application-to-register-child-under-18-as-british-citizen-form-mn1>

16 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/755505/Registration-as-a-British-citizen-children-v4.0ext.pdf

17 Schedule 8, Regulation 10 of The Immigration and Nationality (Fees) Regulations 2018 (as amended in 2019)

The fee as it applies to children has been considered by the High Court in *PRCBC & Ors* [2019] EWCA Civ 3536 (Admin). For an update on this litigation (currently before the Court of Appeal), see our FAQ4 at this link:

https://prcbc.files.wordpress.com/2020/08/faq4_prcbc_aug2020docx-2.pdf

Biometrics

Section 41(1)(bza) of the BNA 1981 was introduced by section 10 of the Immigration Act 2014 to make biometrics a requirement in registration applications¹⁸. This requirement came into force on 28 July 2014. The relevant registration forms have been amended to include the relevant required biometrics information. There is a post office fee of £19.20 for the process.

What if an application to register a child is refused by the Home Office?

The registration application fee is not reimbursed if the application fails or is refused.

It is possible to request a review of a decision to refuse to register a child as British. The Home Office would normally expect that a review request is made by completing Form NR.¹⁹ There is a £372 fee for this review process. The £372 is refundable if the decision is reversed in the applicant's favour. There is no specified time by which to submit a request for a review.²⁰ However, this should be done as soon as reasonably possible.

Other than the above-mentioned internal review, there is no right of appeal to the Tribunal. The only remedy left to challenge a refusal to register a child as a British citizen is by issuing judicial review proceedings in the High Court, which must be done as soon as reasonably possible and certainly within three months of the date of the decision to refuse to review a decision to refuse registration.

Dual nationality when becoming a British citizen

A child does not need to give up his/her present citizenship or nationality to become a British citizen.²¹

However, some countries do not allow their citizens to hold another nationality (dual nationality). If a child becomes a British citizen and s/he is a national of a country which does not allow dual nationality, the authorities of that country may either regard the child as having lost that nationality or may refuse to recognise the child's new nationality.

¹⁸ See Part IIA of the British Nationality Regulations 2003 as amended by SI/2015/7388

¹⁹ <https://www.gov.uk/government/publications/application-for-review-when-british-citizenship-is-refused-form-nr>

²⁰ <http://www.ilpa.org.uk/resource/31256/customer-service-operations-uk-visas-and-immigration-to-ealing-law-centre-of-6-august-2015-re-freedo>

²¹ See Gov UK website: <https://www.gov.uk/dual-citizenship>

It's very important for the client and carer to be made aware of this. The client and carer should check with the authorities of the country of which the child is a citizen before a child applies to register as a British citizen.

Appendix

Some relevant definitions under the British Nationality Act 1981²²

Section 50 of the Act contains some important definitions under the Act. (our emphasis throughout):

Meaning of “Armed forces”

Section 50 provides:

(1A) Subject to subsection (1B), references in this Act to being a member of the armed forces are references to being—

(a) a member of the regular forces within the meaning of the Armed Forces Act 2006, or

(b) a member of the reserve forces within the meaning of that Act subject to service law by virtue of paragraph (a), (b) or (c) of section 367(2) of that Act.

(1B) A person is not to be regarded as a member of the armed forces by virtue of subsection (1A) if the person is treated as a member of a regular or reserve force by virtue of—

(a) section 369 of the Armed Forces Act 2006, or

(b) section 4(3) of the Visiting Forces (British Commonwealth) Act 1933.

Meaning of “Mother”

s50(9) BNA 1981:

“For the purposes of this Act a child's mother is the woman who gives birth to the child”.

Meaning of “Father”

Before 1 July 2006: A father was only considered to be the person married to the child's mother at the time of the child's birth.

From 1 July 2006: For those children born on or after 1 July 2006, section 50 of the Act was amended to define a “father” as follows:

*(9A) For the purposes of this Act a **child's father** is—*

²² s50, British Nationality Act 1981

- (a) the husband, at the time of the child's birth, of the woman who gives birth to the child, **or**²³
- (b) where a person is treated as the father of the child under section 28 of the Human Fertilisation and Embryology Act 1990 or section 35 or 36 of the Human Fertilisation and Embryology Act 2008, that person, **or**
- (ba) where a person is treated as a parent of the child under section 42 or 43 of the Human Fertilisation and Embryology Act 2008, that person, **or**
- (c) where none of paragraphs (a) to (ba) applies, a person who satisfies prescribed requirements as to proof of paternity.**

Meaning of “Parent”

Section 50(9C) makes clear that parent means mother or father as defined by the Act (see above).

Meaning of “Settled”

Section 50(1) states that for the purposes of the Act, “settled” is to be construed in accordance with section 50(2)-(4). Section 50(1) also includes a meaning of “immigration laws”, which is important for the meaning of those provisions, which include at section 50(2) that:

(2) Subject to subsection (3), references in this Act to a person being settled in the United Kingdom... are references to his being ordinarily resident in the United Kingdom... without being subject under the immigration laws to any restriction on the period for which he may remain.

Also relevant to interpreting this provision is section 50(5), which states:

(5) It is hereby declared that a person is not to be treated for the purpose of any provision of this Act as ordinarily resident in the United Kingdom... at a time when he is in the United Kingdom... in breach of the immigration laws.

Calculating “Absences”

Section 50(10)(b) provides that for the purposes of the Act:
any reference to a day on which a person was absent from the United Kingdom... is a reference to a day for the whole of which he was so absent.

23 The High Court made a declaration of incompatibility under section 4(2) of the Human Rights Act 1998 in *R (K, a child by her litigation friend MT) v Secretary of State for the Home Department* [2018] EWHC 1834 (Admin).