



Project for the Registration of Children as British Citizens (PRCBC)
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Practitioner's note on new Home Office policy guidance on *Registration as a British citizen: children*, version 9.0 – particularly as this relates to section 3(1) of the British Nationality Act 1981

1. [Registration as a British citizen: children, version 9.0](#) was published for Home Office staff on 18 July 2022; and became publicly available on the gov.uk website the following day.
2. This revised guidance follows a succession of applications for judicial review of refusals to register children under section 3(1) of the British Nationality Act 1981 since 2014, in which Claimants were assisted and represented by the Project for the Registration of Children as British Citizens (PRCBC). This led to the Secretary of State agreeing to review the guidance in the course of settling the claim of [Ojeh \(CO/4869/2020\) in April 2021](#).
3. The revised guidance also follows the [as yet undisclosed](#), best interests assessment carried out by the Home Office in 2022. That assessment was in response to the rulings of the [High Court](#) and [Court of Appeal](#) in 2019 and 2021 respectively that the Secretary of State had unlawfully failed to consider or give effect to the best interests of children in setting the fee for a child to be registered as a British citizen. The applications for judicial review, which led to those rulings were brought by PRCBC and two child Claimants.
4. The guidance is for Home Office caseworkers deciding registration applications made by children. It is no more than guidance. It is not law. It indicates how the Home Office understands the law that it is to apply; and how therefore it can be expected to apply that law in practice.
5. The bulk of the guidance up to page 17 concerns various entitlements of children to be registered as British citizens.¹ From page 17, the guidance almost exclusively concerns the application of the discretion provided by section 3(1) of the British Nationality Act 1981. Section 3(1) states:

If while a person is a minor an application is made for his registration as a British citizen, the Secretary of State may, if he thinks fit, cause him to be registered as such a citizen.

¹ There are other entitlements to be registered as a British citizen that may apply to some children and are not addressed in this guidance.



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6. There are two particularly significant amendments to the guidance that are highlighted in this note:
 - (a) a general statement concerning British citizenship and children's best interests; and
 - (b) a new section concerning the application of the section 3(1) discretion to children who have lived in the UK for 10 years

General statement concerning British citizenship and children's best interests:

7. In the section of the guidance on *Section 55 and Article 8 considerations*, there is the following general statement:

All decisions must demonstrate that children's best interests have been considered as a primary, but not necessarily the only consideration. Whilst in the majority of cases it might be argued that it is in an individual child's best interests to become a British citizen, British nationality law is based on the acquisition of citizenship through a close connection with the UK, including residence, lawful presence and family ties. It is therefore consistent that we adopt similar expectations in applying the Home Secretary's discretion to register a child.

8. What is important here is the express recognition of two matters that PRCBC has long identified and argued (including in the litigation referred to earlier in this note):
 - Firstly, British nationality law (in relation to British citizenship) is based on acquisition of British citizenship by close connection to the UK.
 - Secondly, the exercise of the section 3(1) discretion is to be based on similar expectations concerning connection.
9. What constitutes close connection for this purpose is a matter of law. The British Nationality Act 1981 provides no precise definition as to either the meaning of connection or the degree of connection that establishes a right to British citizenship. The Act does, however, set out Parliament's assessment of what constitutes sufficiently close connection. That is revealed by the Act's various provisions for acquisition of citizenship automatically or by registration entitlement. Any exercise of the section 3(1) discretion that refuses citizenship to a child whose connection to the UK can reasonably be identified as similarly or equally close may, therefore, be wrong in law.
10. Whether a child has sufficient close connection to the UK is a matter to be demonstrated by evidence.

Children who have lived in the UK for 10 years:

11. The guidance includes a new section on *Children who have lived in the UK for more than 10 years*. That section includes the following statement:

10 years is the length of time required for a child born here to have lived in the UK to have an entitlement to register under section 1(4) of the British Nationality Act 1981. As such, 10 years constitutes a significant period of residence for a child to demonstrate a strong connection with the UK.

12. This section of the guidance goes on to instruct a Home Office caseworker that a child applying under section 3(1), who has lived in the UK for 10 years, “*must normally*” be registered as a British citizen if:

- *the child is in the UK lawfully*
- *the parents have regularised their own status*
- *where necessary the parents consent to the registration or any objections by the non-applying parent are ill founded*
- *there is no reason to refuse on character grounds*

13. Most children who have lived in the UK for 10 years and can show they have leave to enter/remain and their parents also have leave to enter/remain should now, therefore, be able to make reasonably straightforward applications under section 3(1).²

14. As for children, who have lived in the UK for 10 years but are without leave to enter/remain, the guidance states that the condition of lawful presence is intended to avoid providing a reward or incentive for failure to comply with immigration law. However, it also expressly states that a child’s status may be “*beyond the child’s control*”. That is a significant understatement; and even the guidance expressly acknowledges by way of example:

...it may be appropriate to register an older minor [who is without leave to enter/remain] who has lived in the UK since they were a baby, has completed all of their schooling in the UK and has demonstrated very strong personal connections with the UK through relationships and involvement in community groups.

15. As for children, whose parent or parents are without leave to enter/remain, the guidance expressly recognises circumstances in which it would be wrong to insist on the child’s parents’ status. For example:

² Neither parental consent nor good character are considered in this note. However, as regards consent, PRCBC notes that this is not a statutory requirement for registration under section 3(1) BNA 1981. The degree to which it may or may not be reasonable for the Home Office to insist on consent from either or both parents is likely to depend on the relevant factual circumstances, including the relative age and maturity of the child.

It may be argued that for a child who has lived most of their life in the UK and formed connections here, it is in their best interests to secure their status. However, this is more apparent for older minors who have formed their own independent connections (which they would expect to continue were the parents to leave the UK). A younger child's future, however, will normally follow that of the parents, and so their future intentions may not clearly lie in the UK.

16. Many children may benefit from these passages of the guidance. However, the question is not whether a child's circumstances are expressly within the guidance. The question is whether the child's connection is shown to be sufficiently close to be registered as a British citizen. The guidance sets out circumstances in which the Home Office should ordinarily accept that the required connection has been shown. This does not mean that a child in other circumstances cannot show that connection. However, the child will then need to establish her, his or their connection with potentially complex and detailed evidence of it.
17. It is important to consider the matter of consistency concerning recognition of close connection (see the previous section of this note). It is helpful that the guidance provides some further recognition of this by its express reference to registration under section 1(4) of a child born in the UK who has lived here up to the age of 10.
18. However, the entitlement to be registered as a British citizen under section 1(4) is entirely free of any condition relating to the status of the child or of the child's parents. Clearly, therefore, Parliament has determined that neither is necessary – though it may be relevant – to establish the connection that is needed for a right to citizenship.

Children in local authority care:

19. The guidance has little to say about children in care. However, it does indicate that what the guidance describes as 'normal requirements' for a child to be registered may not apply to a child in care – for example, in the section on *Children who have lived in the UK for more than 10 years* when discussing children without leave to enter/remain. Moreover, it indicates that a specific team has been established to ensure that rights to British citizenship of children in care are not overlooked. It states:

Sensitive cases concerning children under Local Authority care, must be referred to the Citizenship Vulnerable Persons Team (CVPT). The CVPT has been established particularly to ensure that children in care, and those responsible for their care, do not overlook opportunities for British citizenship.

20. This is a welcome statement of positive intent. It does not provide any specific express recognition of when it will be appropriate to register a child in care as a British citizen. However, where a local authority has accepted full responsibility for a child, that will

usually make clear that the future of the child lies in the UK; and ought normally to be sufficient for the child to be registered as a British citizen.

Conclusion:

21. The revised guidance should assist many children in the UK, with at least 10 years' residence here, to secure their registration as British citizens more easily under section 3(1).
22. Children, who have not lived in the UK for that period and do not fall within any of the other descriptions in the Home Office guidance about when a child must or should normally be registered as a British citizen, may still have sufficient connection to merit their registration as British citizens. Clear evidence of that connection will be needed. However, the guidance should assist many children by more clearly setting out how considerations of connection relate to acquisition of citizenship automatically or by registration entitlement as set out in the British Nationality Act 1981.
23. PRCBC welcomes continued progress towards proper recognition of children's citizenship rights and their importance to children. It was only in August 2021, that this same guidance with revised to remove the statement that citizenship provided a child "*no additional benefits that cannot be obtained through IL [indefinite leave]*". The Home Office has now acknowledged in [Ministerial correspondence with PRCBC](#):

"...the particular value British citizenship can have for children who have been born here or spent a substantial part of their lives in the UK, particularly those intangible benefits in terms of the sense of identity and belonging which develop during an individual's formative years, along with the impact this can have on their wider wellbeing."

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