

Registration of children as British citizens

This fact sheet provides some basic information on which children are automatically British citizens and which children can apply for British citizenship. It relates to children born in the UK. It outlines why it may be important for a child obtain British citizenship.

When is a child born in the UK automatically British?

Where a child is born in the UK and one or both of their parents is British or settled (i.e. has no time restriction on their stay) **[1]** at the time of the birth, the child is automatically British. This applies for children born on or after 1 July 2006.

A child born in the UK before 1 July 2006 is automatically British if they were born to a British or settled mother. A child born in the UK before 1 July 2006 to a British or settled father will only be automatically British if the child's parents were married at the time of the birth, or later marry. **[2]**

However, a change has been made to the law on children born before 1 July 2006 to unmarried parents, which came into force on 6 April 2015. Now, a child born before 1 July 2006 to a British or settled father who was not married to the mother can apply to register as British by entitlement. There is no fee for this. **[3]**

Prior to 1 January 1983 any child born in the UK was automatically a British citizen.

Acquisition by adoption

A child will automatically acquire British citizenship if they are adopted in the UK by a British citizen. Under section 1(5) / section 1(5A) of the British Nationality Act 1981, the child becomes British from the date of the adoption. No citizenship application is necessary; the child can simply apply for a British passport if they wish.

Applying to become a British citizen

Children can only apply to register as British citizens whereas most adults apply to naturalise as British citizens (adults can sometimes register too). Registration is how the process of obtaining British citizenship is referred to for children.

The main source of law on the registration of children as British citizens is the British Nationality Act 1981, which has had various amendments made to it since it came into force on 1 January 1983. There are also various pieces of secondary legislation, Home Office guidance and case law that are relevant to children's registration as British citizens.

Which children can apply to register?

Some children can apply to register by entitlement. This means that if the child meets the requirements and is not caught by the 'good character' test, the Home Office must register them. Children can apply to register by entitlement in a number of situations, including (but not limited to) the following.

- A child born in the UK whose parent or parents become British or settled. The child can apply to register under section 1(3) of the British Nationality Act 1981. This is done using Form MN1. The application fee is £936 and there is no fee exemption for a child looked after by a local authority. The application has to be submitted while the child is under 18.
- A child born in the UK on or after 1 January 1983 who has lived in the UK until the age of ten without absences from the UK of more than 90 days in any one of the ten years. **[4]** The person can apply to register under section 1(4) of the British Nationality Act 1981. This is done using Form T. The application fee is £936 for a child and there is no fee exemption for a child looked after by a local authority. The application can also be submitted by applicants over 18 who meet

the requirements but the fee increases to £1,121.

Other children can apply to register at discretion. Section 3(1) of the British Nationality Act 1981 gives the Home Office a broad discretion to register any child as British. Section 3(1) of the British Nationality Act 1981 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.

A discretionary registration application is done using Form MN1. The application fee is £936 and there is no fee exemption for a child looked after by a local authority. The application has to be submitted while the child is under 18.

The Home Office must consider each application for discretionary registration individually. The Home Office will consider whether the child falls into particular categories outlined in their guidance (such as 'minors wishing to following a particular career').

[5] If the child does not fall within a specified category, the Home Office will use their general criteria, also contained in their guidance. **[6]** These criteria are:

- Future intentions. The child's future should clearly lie in the UK.
- Citizenship and immigration status of the parents. It is normally expected that one parent is or is about to become British and the other is settled or at least is 'unlikely in the short or medium term to be returnable to his or her country of origin'.
- Length of residence in the UK. Children aged 13 and over are normally expected to have lived in the UK for at least two years.
- Conditions of stay. It is normally expected that a child has no restriction on the length of time they can stay in the UK (i.e. they are settled).

- Character. This becomes more important the closer the child is to 18.
- Parental consent. The Home Office will normally expect consent of both parents.
- The best interests of the child.

Some children who apply for British citizenship may already be settled. For example, they may claim asylum, be granted leave as a refugee for five years, apply for indefinite leave to remain and then wish to apply for British citizenship.

Other children may make a discretionary registration application at a time when they have no leave in the UK or only temporary leave. For example, they may have come to the UK as an infant and it may be that when they are a teenager the appropriate route for them is to apply to be registered as British. They may not appear to fit all the general criteria, but it may nonetheless be possible to argue that registration is appropriate in their case.

The guidance on discretionary registration applications refers specifically to children looked after by a local authority. **[7]** The local authority may be asked to produce a background report for the application. The Home Office will normally require consent of all those with parental responsibility.

'Good character' requirement

Registering a child as a British citizen under the provisions mentioned above is subject to the child, if they are over the age of ten, being considered by the Home Office to be of 'good character'. Even for children, the Home Office will take into account their adult standards on good character. **[8]** Any criminal convictions will be relevant to a registration application and may be grounds for refusal. In addition, the standards mention 'illegal entry' and 'evasion of immigration control'. The 'good character' requirement can be complex and legal advice should be sought if it may affect an application.

Why is obtaining British citizenship important?

There is a misconception amongst some professionals working with children and young people that British citizenship is just about getting a passport and wanting to travel. This is a serious misunderstanding. There are many reasons why it is very likely to be in the best interests of a child living here to obtain British citizenship if possible.

Citizenship is the most secure position for a child. If a person has British citizenship, they are not subject to immigration control. They do not need leave to enter or remain in the UK. They have what is called the 'right of abode', [9] which means that they are free to come into, live in and leave the UK as they please. [10] They can apply for a passport and travel in the knowledge that they will be able to return to the UK. They will enjoy the protection of the state, including protection from British embassies abroad. British citizenship also brings with it the benefits of being a citizen of the European Union.

Citizenship is permanent and can only in very rare cases be revoked. By contrast, if someone has indefinite leave to remain (i.e. is settled) and they are convicted of a criminal offence, it is likely that the Home Office will consider revoking their leave and deporting them. Too many young people in the criminal justice system, including those who have been in care, face having their leave revoked and being deported, sometimes to a country they have not been to since they were an infant. Some of these young people could have obtained British citizenship if only the right application had been made for them.

Obtaining British citizenship creates stability for the child, which is important for the child's development and wellbeing. It may also be important for the child's sense of their own identity. They may identify strongly as British.

Gaining citizenship means formally gaining equal rights in common with other citizens and opens up opportunities that someone would not otherwise have. Obtaining British citizenship can be important for progression in education including to university, facilitating access to student finance and designation

as a 'home' student. It may enable the child or young person to take up particular educational opportunities, such as scholarships or study trips. It might enable them to represent the UK in sport or other areas or take up certain opportunities, such as training with a football club. Without British citizenship young people are unable to pursue certain career paths, including joining the armed forces, civil service or the police. Citizenship is also important for children and young people's political participation. Unless they are citizens, they cannot generally vote.

Being a British citizen also enables the person to more easily transmit British citizenship to any children they have.

Effect on another nationality

The UK allows dual nationality but some other countries do not. Before an application is made for British citizenship, it is worth considering whether obtaining British citizenship would have any effect on any other nationality that the child may hold. UK lawyers are unlikely to be able to assist, so it may be necessary to find a lawyer from the country in question. In the case of someone who has claimed asylum it may be inappropriate to contact the embassy of the country, but in other cases contacting the embassy might be helpful to get information on that country's nationality law.

Getting legal assistance

No legal aid is available for citizenship applications. However, there are some specific legal projects working in this area. We have a project at Coram Children's Legal Centre taking on certain registration applications (entitlement applications). There is also a project called the Project for the Registration of Children as British Citizens (see <https://prcbc.wordpress.com/>) hosted by the Migrant Resource Centre, which takes on complex nationality cases on a pro bono basis. Alternative options are to pay privately for legal representation or to submit the application unassisted.

Challenging a refusal

If a citizenship application is refused, the application fee is not reimbursed. There is no automatic appeal right if the Home Office decides to refuse an application to register a child as a British citizen. It is possible, however, to request a review. The Home Office expects a request for a review to be made on Form NR. There is a fee of £80. There is no deadline for requesting a review, but it should be done as soon as possible.

If the review does not result in a change in the decision, the only remedy available is to challenge the refusal by issuing judicial review proceedings in the High Court. This will require legal assistance. Legal aid is available for judicial review, so the child or young person should be assisted to find a solicitor with an immigration and asylum legal aid contract.

A grant of citizenship

If an application to register a child as a British citizen is granted, the Home Office will issue the child with a certificate of registration. Those under 18 do not have to attend a citizenship ceremony. Attending a citizenship ceremony is only required if the child applies as a minor but turns 18 by the time that the application is decided or in the case of someone over 18 applying for registration under section 1(4) of the British Nationality Act 1981 on the basis of ten years' residence.

Applying for a passport

Once the child has been granted citizenship, they can, if they wish, apply for a British passport using the normal passport application procedure.

NOTES

- [1] Since 30 April 2006 a European Economic Area national with permanent residence is regarded as settled. Between 2 October 2000 and 30 April 2006 an EEA national was only regarded as settled if they had indefinite leave to remain. Prior to 2 October 2000, all EEA nationals exercising Treaty rights were regarded as settled.
- [2] For a child born before 1 July 2006, section 50(9) of the British Nationality Act 1981 held that 'the relationship of father and child shall be taken to exist between a man and any legitimate child born to him'. Section 47(1) allowed for the child to be later 'legitimated': 'A person born out of wedlock and legitimated by the subsequent marriage of his parents shall, as from the date of the marriage, be treated for the purposes of this Act as if he had been born legitimate.'
- [3] Section 65 of the Immigration Act 2014 inserted sections 4E to 4J into the British Nationality Act 1981.
- [4] There is discretion to allow longer absences.
- [5] Home Office, Nationality Instructions, Chapter 9: Registration of minors at discretion, 9.6 to 9.16.
- [6] Home Office, Nationality Instructions, Chapter 9: Registration of minors at discretion, 9.17 to 9.18.
- [7] Home Office, Nationality Instructions, Chapter 9: Registration of minors at discretion, 9.23.
- [8] Home Office, Nationality Instructions, Chapter 9: Registration of minors at discretion, 9.17.29. The standards are set out in the Nationality Instructions, Chapter 18: Naturalisation at discretion, Annex D.
- [9] Section 2(1)(a), Immigration Act 1971.
- [10] Section 1(1), Immigration Act 1971.

For further assistance contact our advice line. Call 0207 636 8505 or email mcp@coramclc.org.uk.