

Registration of Children as British Citizens

This fact sheet provides basic information on how some children are automatically British citizens, and how those who are not can be registered as British. It is not a complete statement of the UK law of nationality

The law governing UK citizenship for births after 1 January 1983 is the **British Nationality Act 1981**.

Children who do not need to register as British

Where a child is born in the UK, and has a **parent** who is either British or **settled** at the time of the birth the child is automatically British *by birth*, under Section 1 of the British Nationality Act (BNA).

Where a child is born outside of UK and one of the parents is British (but not 'by descent'), the child is automatically British *by descent* under Section 2 BNA.

A child who is adopted by a British Citizen parent in the UK – or under a qualifying Hague Convention adoption – becomes British on the date the adoption takes effect, *by operation of law*.

What 'parent' and 'settled' mean under the BNA

The parents are:

The woman who gives birth to the child, and (in order of priority):

- The husband of the woman, at the time she gives birth to the child. This means that the father under the BNA may not be the father recorded on the UK Register of births, or in the Family Court
- A person treated as a parent under the Human Fertilisation and Embryology Act(s)
- Where neither of the above applies, a person who satisfies prescribed requirements as to proof of paternity after 1 July 2006. A father who is recorded on a UK birth certificate after that date will usually meet the requirements, although additional proofs of paternity may be needed for birth certificates issued after 10 September 2015

Some fathers cannot fit the BNA definition of 'parent' under the BNA, even if they are on the birth certificate or there is other clear proof of paternity:

- The father of a child born before 1 July 2006, who was not married to the mother at the time of the birth (and has not married her since);
- The father of a child born to a mother who was married to someone else at the time of the birth.

In both the above situations, the child is not automatically British even although the natural father was British or settled at the time of the birth.

However, in both the above situations, the child can be registered as British, and it is possible to make a fee-free application (covered below).

What settled means

A person is settled when they are ordinarily resident without being subject under UK immigration laws to any restriction on the period for which they may remain in UK. This means someone is settled where:

- They have indefinite leave to remain (ILR)
- They have ILR under the EU settlement scheme (settled status)
- They are an EEA national or EEA national's family member and are permanently resident in accordance with the Immigration (EEA) Regulations of either 2006 or 2016. The Immigration (EEA) Regulations 2000 (which applied between 2 October 2000 and 29 April 2006) made no provision for EU permanent residence, so showing settlement of parents with EU rights during this period is problematic. A person can be permanently resident by operation of law, regardless of holding a permanent residence document
- Prior to 2 October 2000, an EEA national parent who was exercising EU Treaty Rights in UK at the time of their child's birth was considered settled

You can check if you're British here:

<https://www.gov.uk/check-british-citizenship>.

The nationality department of the Home Office which considers applications to register must also check whether a child is already a British citizen – a child can be British without the parents realising it. There are also some minor categories not mentioned above – for example people born after 13/1/10 who had a parent serving in the UK armed forces (since it is almost always necessary to be British in order to serve, this covers very few parents who would not otherwise qualify). Get legal advice if in doubt.

Getting a British passport

If a child is British the parent(s) can simply apply for a child's passport: <https://www.gov.uk/get-a-child-passport/first-child-passport>. There are special arrangements for children who are living abroad.

There is also specific guidance for those applying on the basis of EU permanent residence/Treaty Rights, here: <https://www.gov.uk/government/publications/treaty-rights>.

Applying for a child to become British

If a child is not British by birth, descent, or operation of law, they have to apply to **register** as British. If a child has been born in UK, or has an ancestral link to UK, they may be able to register by entitlement. If there is no entitlement, then it is possible to apply to register at the Secretary of State's discretion. An entitlement route, where possible, is always preferred. There is an indication under the specific registration categories as to whether the citizenship granted will be 'by descent' or 'otherwise than by descent'. The difference relates only to the ability to pass on British citizenship to subsequent generations born outside UK.

For most children's applications, the application is made on Form MN1 and requires parental consent.

Which children can apply to register by entitlement?

Where the circumstances of the child meet certain requirements – which, such as paternity, have to be evidenced – and the child is not caught by the 'good character' test, the Home Office must register them as British. Children can apply to register by

entitlement in a number of situations, including the following:

- A child born in the UK whose parent becomes British or settled - section 1(3) of the BNA. The application to register must be made whilst the child is still a minor.
- A child born in the UK after 13/1/2010 whose parent becomes a member of the UK armed forces – section 1(3A) of the BNA. The application must be made whilst the child is still a minor.
- A person born in the UK who has lived in the UK for the first ten years of their life, without absences from the UK of more than 90 days in any one of the ten years – section 1(4) of the BNA. Parental consent is not required to register under this section; adults can also register.
- A child born outside the UK whose parent is British by descent, but whose associated grandparent is/was British (not by descent) and the parent had lived in the UK for a three year period (without an absence of longer than 270 days in that 3y period), before giving birth. The 3y UK parental residence is not required if the child is stateless – section 3(2) BNA. The application must be made whilst the child is still a minor, and gives citizenship by descent.
- A child born outside UK to a parent who is British by descent, where the child and both parents have lived in UK for the three year period (with no absence over 270 days) up to the date of application to register. Both parents must consent, although there is provision covering the legal separation or death of a parent- section 3(5) BNA. The application must be made whilst the child is still a minor.

Entitlement to register for people born before 1/7/06 whose parents weren't married

Sections 4E to G BNA outline the general conditions allowing registration by entitlement for people who:

- have never been British
- were born before 1 July 2006 and
- the mother was either unmarried, or married to someone other than the natural father at the time

of the birth, where – had they been married to each other – the status of the natural father would have meant that the child would either:

- have had an entitlement to register under sections 1(3), 3(2), 3(5), or paragraphs 4 or 5 of Schedule 2, of the BNA – registration is under Section 4F BNA, or
- would have acquired citizenship automatically at birth under section 1(1) BNA – registration is under section 4G BNA.

Form UKF is used for these registrations. Section 4G BNA registrations do not attract a fee.

Entitlement to register for British Overseas Territories citizens

Section 4(2), 4B, 4D and Section 5 BNA relate to people who already have some form of British nationality such as British Overseas territories citizens, or are born abroad to parents serving in the UK armed forces.

Schedule 2 BNA – Entitlement to register to avoid statelessness

A person born in UK, who is and has always been stateless, is aged under 22, and has lived in UK for a period of 5 years (without an absence of more than 450 days) leading up to the date of application, can register under paragraph 3 of Schedule 2 BNA. What constitutes statelessness can be complex; specialist advice should be sought. The application is made on Form S3. Please see our fact sheet on statelessness <https://www.childrenslegalcentre.com/resources/stateless-children/>.

A person born outside UK who is stateless and whose father or mother was a British Overseas/territories citizen/subject can register under paragraphs 4 or 5 of Schedule 2 BNA.

Registration at discretion

Section 3(1) of the BNA gives a broad discretion to register any child as British. It 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.

The Secretary of State is, for practical purposes, a nationality caseworker in the Home Office. This decision maker has to look at the detailed guidance at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/879763/registration-as-a-british-citizen-children-v6.0ext.pdf on children's registrations. Each application for discretionary registration of a child must be considered individually on its merits, and is subject to a 'good character' check for children who are 10+ years old.

Most children applying to register as British at discretion are applying from within UK under the general discretionary criteria (see below), but there are specific categories outlined in guidance where the Home Office 'must normally register' – these categories are akin to entitlement registrations:

- A child born abroad to a parent who is British by descent serving in a community institution before it was designated, and who do not qualify to register by entitlement
- A child born to a parent who had renounced (but has now resumed) British citizenship
- A child born to a parent before that parent had registered as British by entitlement under the provisions in section 4 BNA designed to correct historic sexism and paternity rules
- A child adopted by a British citizen abroad, where section 1(5) BNA – automatic acquisition by operation of law in a qualifying Hague Convention adoption – does not apply, but the adoption is recognised. Other adoption situations are dealt with in detail in the children's guidance.

Marital status of mother or father a bar to automatic acquisition or entitlement registration

- A child born before 1/7/06 to a natural dad who was British or – if born in UK – settled at the time of the birth and who for some reason does not have an entitlement route under s4 BNA, can register under s3(1) BNA

- A child born after 1/7/06 who at the time of the birth had a mother married to someone other than the natural British or – if born in UK – settled father. In such a case, an application to register can be made on Form UKF(M), a fee waiver can be applied for, and paternity has to be evidenced.

Surrogacy situations, and parents who fall outside the BNA definitions of 'mother' and 'father'

A child who cannot fit into the structure of the BNA to acquire British citizenship automatically or to be registered by entitlement, must normally be registered as British under section 3(1) if specific requirements as to parentage, set out in the guidance, are met.

General discretionary criteria

All other applications under section 3(1) BNA should, according to the guidance, only be granted

where it is in the child's best interests to be registered and the child has a strong connection with the UK. It is not intended to provide individuals with a route around the requirements of the Immigration Rules

The following factors are taken into account, although it must be emphasised that none is strictly required, and this is why specialist legal advice should be sought for this sort of application:

- the child's future intentions – stated intention for a future in UK should be accepted, unless doubt is cast by recent absences, or proposed absences from UK
- The child's parents' circumstances – one parent should be British or nearly so, and the other parent on a route to settlement
- Length of residence in the UK (where the child is over 13 years old – at least 2 years' residence is expected)
- the child's immigration status. The guidance refers to a 'staged approach', such as happens for adults who naturalise, and who need to be settled
- any compelling compassionate circumstances raised in the application

The guidance on discretionary registration applications outlines the evidence to be supplied, and

alerts caseworkers to their duty to be compliant with the obligation to take account of the need to **safeguard and promote the welfare of children** when making nationality decisions duty under section 55 of the Borders, Citizenship and Immigration Act 2009. In addition, there may be a breach of Article 8 of the European Convention on Human Rights if a decision to refuse citizenship is made on **arbitrary or discriminatory grounds**.

Parental arrangements and consent

The consent of both parents to a child's registration is normally expected. An application can be made by anyone sharing parental responsibility for a child with the parents, but the guidance states that the consent of **all** those with parental responsibility must be sought. In England and Wales, this includes:

- the mother
- the father, where he has parental responsibility (e.g. where it applies automatically if he jointly registers the birth)
- a guardian or special guardian
- anyone with a residence or contact order in respect of the child
- a local authority which has a care order
- someone who holds an emergency protection order
- someone who has adopted the child

The need to get parental consent can be a real barrier to looked-after children (LAC) registering as British at discretion. Parental consent is **not** actually a **legal** requirement for applications under 3(1) BNA, but any applicant will have to show that they tried to get it.

Where there are problems, or disputes between those with parental responsibility, the involvement of a lawyer or mediator may be particularly desirable.

Looked-after children where the local authority is the 'corporate parent'

A background report from the local authority is required when a looked-after child applies to register. Looked-after children are now entitled to legal aid for nationality law matters, and a specialist nationality

lawyer will be needed for a discretionary application. This person should be able to liaise with the child's social worker.

Even if a minor is looked after, parental consent is still an issue. If one or both of the parents refuse consent to the application, the guidance states that a child must only be registered if the local authority is satisfied that it is necessary to safeguard or promote the child's welfare. A statement that the local authority considers it to be in the child's best interests to be registered as British should be communicated to the Home Office department considering the claim.

Children making their own applications

The guidance states that there is nothing in law to prevent children making their own applications, but such applications made without the support of those with parental responsibility 'should normally be refused'. However, it also says that if children are 17 or over and have good reason for making the application themselves, it can be considered in the normal way. This may be particularly appropriate, for example, where children have no contact with their natural parents and have been in the care of the local authority. Legal aid is available to looked-after children for help with this.

A child's view should be taken into account anyway when considering an application, including where someone with parental responsibility makes the application, but the child apparently objects.

'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. 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.

It should be noted that in those cases where a child would have been British but for historical discriminatory issues to do with sexism, parents' marital status or paternity – the good character test should not be applied.

Fees and Forms

There is a guide/booklet for each form, in addition to the caseworker guidance.

For most applications, the form used is Form MN1.

For applications under section 1(4) BNA, Form T is used.

For children, the fee for an MN1 or a T application is the same: £1,012 as at April 2020. It is not possible to get a waiver of the fee.

For an application by a person born before 1 July 2006 to a British or (if born in UK) settled father who was not married to the mother, Form UKF is used. There is no fee for applications under section 4G BNA.

For an application by a person born after 1 July 2006 to a mother who was married to a person who was not the British or (if born in UK) settled natural father, Form UKF(M) is used. A fee waiver can be applied for by ticking the box on the front of the form.

No oath or pledge is required of children registering as British. 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.

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', which means that they are free to come into, live in and leave the UK as they please. 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.

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 that 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, at the right time – before they became adult.

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. It may enable the child or young person to take up particular educational opportunities, such as scholarships or study trips, or to access bursaries to train for public service employment in the NHS; 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.

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, and there is a fee. 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.

For further assistance contact our advice line by emailing MCPAdvice@coramclc.org.uk