

Community
Legal Service



COVENTRY LAW CENTRE

IMMIGRATION

Citizenship of Children who were Born in the United Kingdom on or after 1 January 1983

British Nationality Act 1981

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The Nationality Act provided three citizenships

1. Before 1 January 1983, almost every child born in the United Kingdom (see Note 1) was a citizen of the United Kingdom and Colonies. The only exceptions were children who were born to certain people holding diplomatic or consular status. Under the British Nationality Act 1981, which came into force on 1 January 1983, citizenship of the United Kingdom and Colonies was replaced by three new citizenships: British citizenship, British Dependent Territories citizenship (see Note 2) and British Overseas citizenship.

2. A child who was born in the United Kingdom on or after 1 January 1983 will be a British citizen if either the father (see Note 3) or the mother is a British citizen. A child who was born in the United Kingdom on or after 1 January 1983 will also be a British citizen if either the father or mother, although not a British citizen, is legally settled (see paragraph 9) in the United Kingdom. In any other circumstances, a child who was born in the United Kingdom on or after 1 January 1983 will not be a British citizen.

3. A child who was born in a qualifying territory (see Note 4) on or after 21 May 2002 will also be a British citizen if the father (see Note 3) or mother was a British citizen or legally settled either in the United Kingdom or that territory.

Children who are born to British citizens

4. If either parent is a British citizen, a child who was born in the United Kingdom will also be a British citizen. It does not matter how the parent became a British citizen.

Who are British citizens?

People born in the United Kingdom before 1 January 1983

5. Anyone born in the United Kingdom before 1 January 1983 is a British citizen (unless born to certain people holding diplomatic or consular status).

People born outside the United Kingdom before 1 January 1983.

6. People born outside the United Kingdom before 1 January 1983 will have become British citizens if, immediately before 1 January 1983, they were **citizens of the United Kingdom and Colonies** and had **the right of abode** (but see Note 5) in the United Kingdom. They could have got **citizenship of the United Kingdom and Colonies** through descent from a father who was such a citizen, or by having been naturalised or registered as such citizens. They could have **the right of abode if:**

- a. they were adopted, naturalised or registered (see Note 6) as citizens of the United Kingdom and Colonies in the United Kingdom;
- b. they were legally settled in the United Kingdom and ordinarily resident there for five years; or
- c. when they were born, they had a parent who was a citizen of the United Kingdom and Colonies, and the parent was a citizen because he or she was born, adopted, naturalised or registered (see Note 6) in the United Kingdom, or because a grandparent was.

People born outside the United Kingdom on or after 1 January 1983.

7. In some cases, people born outside the United Kingdom on or after 1 January 1983 may also have become British citizens. Further information about this is contained in the leaflet called Children Born Outside the U.K., which you can get from Coventry Law Centre.

How to tell whether you are a British citizen

8. A person born in the United Kingdom before 1 January 1983 will almost certainly be a British citizen. A person born overseas will almost certainly have a passport. Passports are not conclusive evidence of nationality but a passport is normally accepted for official purposes as evidence of the holder's nationality at the time the passport was issued. A person who has a British passport that was issued before 1 January 1983, which describes the holder as a citizen of the United Kingdom and Colonies on page 1, will almost certainly have become a British citizen on 1 January 1983, as long as page 5 of the passport says 'Holder has the right of abode in the United Kingdom' (but see Note 5). British passports issued on or after 1 January 1983 will say whether the holders are British citizens.

Children born to people who are not British citizens but who are legally settled here

9. If neither parent is a British citizen, a child born here on after 1 January 1983 will still be a British citizen if either the father or mother is legally settled. 'Settled' means ordinarily resident (see paragraph 16) in the United Kingdom without being limited under the immigration laws as to how long the person can stay here. For this purpose, a person cannot be ordinarily resident if he or she is in breach of the immigration laws. We do not consider certain members of diplomatic or consular missions, or members of visiting forces or international organisation as being settled here, even if immigration control does not apply to them.

Children born to people who are European Economic Area (EEA) nationals

10. Special consideration applies where a child's parents are EEA nationals who are exercising Treaty rights under European Community (EC) law.

11. A child who was born in the United Kingdom on or after 1 January 1983 but before 2 October 2000 will be a British citizen if, at the time, either parent was an EEA national who was exercising Treaty rights. This is because the parent's stay is regarded as having been free of a time limit under the immigration laws.

12. Since 2 October 2000, EEA nationals who have a conditional right of residence in the United Kingdom (such as workers and business people) are not regarded as free of a time limit under the immigration laws. They are not regarded as settled in the United Kingdom until they obtain indefinite leave to remain. A child of such parents born here on or after 2 October 2000 will not be a British citizen unless one of the parents has first been given indefinite leave to remain. However, a child born here from 2 October 2000 will be able to register as a British citizen if a parent later gets indefinite leave to remain. There are more details about registration in leaflet 'Registration of Children' which you can get from Coventry Law Centre.

13. Children born in the United Kingdom on or after 2 October 2000 to EEA nationals who have an unconditional right of residence under EC law (such as retired people and people unable to work because of incapacity) will be British citizens.

Children born to family members of EEA nationals

14. The family members of EEA nationals exercising Treaty rights may have been settled in their own right when any children were born to them in the United Kingdom. If not, their position will depend upon whether the EEA national exercising Treaty rights could be regarded as settled at the time of the child's birth. Only if the EEA national exercising Treaty rights was settled would the child be a British citizen.

Swiss nationals

15. Since 1 June 2002, Swiss nationals and their family members have enjoyed similar residence rights to EEA nationals. They are not normally regarded as having been free of immigration time restrictions before that date unless they had indefinite leave to enter or remain in the United Kingdom. From 1 June 2002, they are regarded as being free of immigration time restrictions in the circumstances described above.

Ordinary residence

16. Whether a person is ordinarily resident or not depends on the facts of the case. A person who is not limited under the immigration laws to any restriction on the period for which he or she may remain is probably ordinarily resident if he or she:

- a. has been living in the United Kingdom for a number of years, without being absent, except for short holidays; and
- b. is in the United Kingdom legally (without being in breach of the immigration laws).

Long periods of absence from the United Kingdom (for more than a year, for example) may mean that a person is not ordinarily resident. Shorter periods of absence may also, in some circumstances, mean that a person is no longer ordinarily resident (for example, if he or she left the United Kingdom intending to live abroad permanently).

Children born to people who are not British citizens and are not legally settled here

17. If neither parent is a British citizen or legally settled here, the child will not be a British citizen at birth. So, if a married couple have only been allowed into this country temporarily, for example, as visitors or students, or to work, and they are still limited as to how long they can stay, or if they are staying on without permission, their child will not be a British citizen at birth. Nor will their child be a British citizen if they have entered the country illegally (for example, without being examined by an Immigration Officer or otherwise in breach of the immigration laws) and they have not been given permission to stay here indefinitely. If the parents want to stay in the United Kingdom, we recommend that they apply to the Immigration and Nationality Directorate of the Home Office for themselves and their child to be given leave to remain. The address is:

Immigration and Nationality Directorate
Croydon Public Caller Unit
Lunar House
40 Wellesley Road
Croydon CR9 2BY

You should send your and your child's passport, with his or her birth certificate, and quote any Home Office reference number. Any application for leave to remain should be made on an application form. You can get these forms from the Application Forms Unit at the Immigration and Nationality Directorate. The telephone number of the Application Forms Unit is 0870 241 0645. Normally, where a child is granted leave to remain, the conditions of the child's leave will be in line with his or her parent(s).

Rights to registration as a British citizen

18. If a child does not become a British citizen at birth, he or she may be entitled to registration as a British citizen later. This will happen if either parent becomes a British citizen or legally settles here before the child

is 18; or if the child stays here until age 10. If the child is not entitled to registration, the Home Secretary may decide to allow registration. There are more details in leaflet, "Registration of Children" you can get from Coventry Law Centre.

Notes

1. The United Kingdom means England, Scotland, Wales, Northern Ireland, the Channel Islands and the Isle of Man.
2. Since 26 February 2002, the British dependent territories and British Dependent Territories citizenship have been officially known as British overseas territories citizenship.
3. The father is only relevant in the case of a legitimate child.
4. The "qualifying territories" are the British overseas territories (except for the Sovereign Base Areas of Akrotiri and Dhekelia).
5. People who had the right of abode by registration under the British Nationality (No2) Act 1964 will not normally have become British citizens on 1 January 1983 unless their mothers became British citizens then.
6. Except in certain circumstances.

The law covering British citizenship is in the British Nationality Act 1981 and the Regulations made under it. The information given in this leaflet is only a brief guide to the law and to the Home Secretary's policy. It is not a complete statement of either the law or policy.