

British Nationality Law



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Agenda

- Welcome and Introduction
- Types of Nationality
- Law – relating to British citizenship
- Proposed changes

Presenter

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Previously Sean was the Casework Team Leader (Appeals) at IAS, before taking over as the Immigration Supervisor at a Law Centre, where he qualified as a Solicitor. He worked for a number of years as a Solicitor specialising in Immigration and Asylum work, before joining the Bar.



Aim

This training session aims to cover aspects of British nationality law that an immigration adviser is most likely to come across in day-to-day practice.

We'll also take a look at some of the proposed changes announced in the recent Bill.

Types of British Nationality

- There are six types of British Nationality:
 - (i) British citizenship
 - (ii) British overseas territories citizen
 - (iii) British overseas citizen
 - (iv) British subject
 - (v) British national (overseas)
 - (vi) British protected person

Law – British citizen

- Main legislation governing British citizenship is the **British Nationality Act 1981 (BNA 1981)**
- British citizenship gives the right of abode (as defined in Immigration Act 1971, s.2)
- A person with the right of abode is not subject to immigration control. A person who has the right of abode is free to live in, and to come and go into and from, the UK, subject only to restrictions to enable the right to be established or which otherwise be lawfully imposed
- Certain Commonwealth citizens who held the right of abode in the UK before 1983 retain that status on and after that date. From 1983 only British citizens may acquire the right of abode.

British citizenship

- Automatic acquisition
- Registration – as a minor / adult
- Naturalisation

Automatic acquisition

- Automatic acquisition of British citizenship occurs when, on fulfilment of prescribed conditions, a person automatically acquires British citizenship by operation of law.
 - Birth in the UK or a qualifying territory to a British citizen parent or to a settled parent (s.1(1) of BNA 1981)
 - By descent (s.2 of BNA 1981)
 - By foundling (s.1(2))
 - By adoption or parental order (s.1(5) and s.1(5A))

Registration - minor

- S.1(3) – Registration following parents becoming settled in the UK
- S.1(4) – Registration as a person residing in the UK for ten years since birth
- S.3(1) – Registration at discretion (see HO guidance – “Registration as British citizen: children”)
- S.3(2) & 3(5) – parents British by descent, born abroad but lived in or living in UK or qualifying territories.
- S.4 - BOTC

Registration - adult

In most cases, it is children who apply to be registered as a British citizen on the basis of their parent's status. However, certain adults are also able to apply to register as a British citizen.

Circumstances in which an adult can apply to register as a British citizen include that:

- (i) they have another form of British nationality or;
- (ii) they have a connection with Gibraltar or Hong Kong or;
- (iii) they have a British mother or father and had the right to become a British citizen when they were born.

Naturalisation

- Naturalisation is the most common way for adults to acquire British citizenship.
- The naturalisation route to British citizenship enables adults who do not fulfil automatic registration criteria but who have lived in the UK for specified periods to apply to become a British citizen.
- A person who becomes a British citizen through naturalisation is considered a British citizen otherwise than by descent.

Naturalisation (2)

BNA 1981, s 6 and Sch 1 set out a series of requirements, some of which are compulsory and others of which are subject to an exercise of discretion on the part of the Secretary of State for the Home Department (SSHD) to disregard.

The requirements for naturalisation are different for an applicant who is married to, or in a civil partnership with, a British citizen, or who is in Crown service overseas or married to a British citizen in such service.

Naturalisation, unlike registration, is not an entitlement

Naturalisation (3)

🌀 Requirements to consider...

- 🌀 Was A in the UK at the beginning of the period of five years ending on the date of application?
- 🌀 During those five years, has the A spent no more than 450 days outside the UK?
- 🌀 During the last 12 months of the five-year period, has A spent no more than 90 days outside the UK?
- 🌀 On the date of application, will A be free from immigration time restrictions, and have they been free from immigration time restrictions for the 12-month period ending on the date of application, and
- 🌀 In the five-year period ending on the date of application, has A been in the UK in breach of the immigration laws?
- 🌀 At the time of consideration, the applicant must continue to meet the good character, language and life, full capacity and future intentions requirements.
- 🌀 Some discretion may be exercised over some of the residence requirements and Knowledge of Language and Life in the UK requirements if there are special circumstances
- 🌀 IF Spouse – 3 years, 270 days, 90 days in last 12 months

Good character

- The good character requirement is aimed at ensuring the applicant has not only led a law-abiding life during their time in the UK but that they are also respectful of the 'rights and freedoms' of the UK and will be a 'dutiful' citizen (Sched 1 1(1)(b) of BNA 1981).
- A high standard will be adopted in assessing whether an applicant is of good character - R v Secretary of State for the Home Department, ex p Al Fayed [2001] Imm AR 134, CA
- There is no statutory definition of 'good character' and no statutory guidance on the interpretation or application of the requirement. There is however internal guidance to Home Office decision makers in the form of the Nationality Guidance, Good character requirement, which provides information on how the requirement is applied in practice in relation to all relevant applications for British citizenship.

Good character guidance

- Latest guidance 30th September 2020
- Runs to 54 pages
- A person will not normally be considered to be of good character if there is information to suggest that any of the following apply:
 - Criminality
 - International Crimes/terrorism
 - Notoriety
 - Deprivation
 - Financial soundness
 - Deception
 - Immigration Related Matters

Proposed changes

- Part 1 - Nationality and Borders Bill
- Looks to correct historical inability to transmit British overseas territories citizenship
- Amends period for registration of person born outside the British overseas territories
- Disapplication of historical registration requirements
- Citizenship where mother married to someone other than natural father following *K (A Child) v SSHD* [2018] EWHC 1834 (Admin)
- Registration of citizenship in special cases (discretionary reg of adults)
- Waiver of requirements for naturalisation (outside the UK - Windrush)

Any Questions?

Thanks for watching!

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