Home Office

# Registration as a British citizen in special circumstances

**Version 5.0**

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# About this guidance

This guidance tells caseworkers about registration as a British citizen in special circumstances.

## Contacts

If you have any questions about the guidance and your line manager or senior caseworker cannot help you or you think that the guidance has factual errors, then email Nationality policy team.

If you notice any formatting errors in this guidance (broken links, spelling mistakes and so on) or have any comments about the layout or navigability of the guidance then you can email the Guidance Review, Atlas and Forms team.

## Publication

Below is information on when this version of the guidance was published:

- version **5.0**
- published for Home Office staff on **07 May 2025**

## Changes from last version of this guidance

Updated to clarify the position where a person has another route to citizenship.

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# Registration in special circumstances

Section 4L of the British Nationality Act 1981 was introduced by the Nationality and Borders Act 2022. It is a registration route for adults who would have been, or would have been able to become, a British citizen but for one or more of 3 specific reasons which are set out in statute.

There are already other measures within the 1981 act which are intended to address historical unfairness, such as the routes for children of British parents in sections 4C and 4F - 4I. The 2022 Act also created registration routes (sections 17A-F) for people who did not become British overseas territories citizens and British citizens, because women or unmarried fathers connected to an overseas territory could not pass on citizenship at the time of their birth. There is also a discretionary registration route for children under section 3(1), although it should be noted that provision is broader and section 4L is not intended to mirror it. Instead, section 4L allows us to grant British citizenship in special circumstances where, in the Secretary of State's opinion, a person would have been, or would have been able to become, a British citizen but was prevented from doing so by a limited and specific set of scenarios. It is not intended for situations where the law changed over time but applied equally to everyone in the same way, as was the case when the British Nationality Act 1981 itself became law.

## The law

Under section 4L of the British Nationality Act 1981, a person may be registered as a British citizen if:

- they are of full age and capacity
- in the Secretary of State's opinion, they would have been, or would have been able to become, a British citizen but for at least one of:
  - historical legislative unfairness
  - an act or omission of a public authority
  - exceptional circumstances relating to that person

Section 4L(2) states that 'historical legislative unfairness' includes, but is not limited to, where the person would have become, or not ceased to be, a British subject, citizen of the United Kingdom and Colonies or British citizen, if an act of Parliament, or subordinate legislation, had:

- treated men and women equally
- treated children of unmarried couples in the same way as children of married couples
- treated children of couples where the mother was married to someone other than the natural father in the same way as children of couples where the mother was married to the natural father

In relation to an act or omission of a public authority, section 4L(3) defines a 'public authority' as any public authority within the meaning of section 6 of the Human Rights Act 1998, other than a court or tribunal. This means any person whose

functions are of a public nature. This definition can include a government department or local authority.  It does not, however, include either House of Parliament or a person exercising functions in connection with proceedings in Parliament (for example, MPs and members of the House of Lords).

In considering whether to grant an application under section 4L, the Secretary of State may take into account whether the applicant is of good character.

'Of full age' means a person who is 18 or over. Only adults can apply under this provision, although registration may be based on events when a person was a minor.

'Of full capacity' is defined in the British Nationality Act 1981 as meaning that a person is not of unsound mind. For a detailed explanation of how this is interpreted for the purposes of the Act, and how the requirement to be of full capacity may be waived in certain circumstances see the full capacity requirement guidance.

A person who is registered under this provision will become a British citizen otherwise than by descent. This means they will be able to pass on citizenship to a child born outside of the UK and overseas territories.

## Fees

Fees are payable in accordance with The Immigration and Nationality (Fees) Regulations 2018. People applying on this route who missed out on an entitlement to register, or opportunity to naturalise, as a British citizen because of historical legislative unfairness, an act or omission of a public authority or exceptional circumstances relating to the applicant will be required to pay a British citizenship fee. No British citizenship fee will be applied to applicants who missed out on acquiring British citizenship automatically for one of these 3 reasons.

## Checking the application

It is essential that the person applying shows:

- that they would have been, or would have been able to become, a British citizen – taking into account the legislation in force at the time and citing the section or sections which would have applied to them
- they did not become, or were unable to become, a British citizen because of at least one of the 3 statutory reasons set out in section 4L
- they are of good character if applicable

If the person can show that they meet those requirements, registration may be appropriate. The decision to register is, however, subject to the Home Secretary's discretion.

## Checking whether the person would have been, or would have been able to become, a British citizen

You must first check whether the person would have been, or would have been able to become, a British citizen but for historical legislative unfairness, an act or omission of a public authority, or exceptional circumstances relating to the applicant.

You must consider whether the person would have otherwise:

- become a British citizen automatically – by birth, descent or adoption
- qualified for registration or naturalisation as a British citizen

To assess whether the person would have become British automatically, you must look at their date and place of birth, and their parents' status at the time, to see if they could otherwise have become a British citizen under the relevant nationality legislation. Further information on previous nationality laws can be found in the historical background information on nationality.

To assess whether the person could otherwise have qualified for registration or naturalisation you must consider whether they would have been able to meet the statutory requirements at the relevant time.

You must then assess the reasons put forward why the person was not able to acquire that status, to see if they fit within the conditions set out in the legislation:

- historical legislative unfairness
- an act or omission of a public authority
- exceptional circumstances relating to that person

In considering whether one of those 3 criteria prevented a person from being or becoming a British citizen you must make a decision based on their circumstances without relying on hypothetical assumptions about what a person might have done had the law been different. The courts in the case of R (APD) v Secretary of State for the Home Department [2025] EWHC 246 (Admin) stated that we need to look at "what "would" have occurred if the putative causal event had not taken place, not what "might" have occurred". The judge recognised that there needs to be "a degree of certainty about what would have happened as opposed to mere speculation about what might have happened."

## Historical legislative unfairness

If a person is citing historical legislative unfairness, you must check whether their inability to have been, or been able to become, a British citizen was as a result of the provisions of the historical legislation.

A piece of legislation will be considered to be 'unfair' if it treated one group differently to another, particularly on the basis of a protected characteristic. The legislation states that this might include where:

- men and women were treated differently
- children of unmarried couples were not treated in the same way as children of married couples
- children of couples where the mother was married to someone other than the natural father were not treated in the same way as children of couples where the mother was married to the natural father

This gives an indication of the sorts of situations parliament intended to address but is not exhaustive. Additional examples of legislative unfairness will generally be of a similar nature to those set out above. For example, it may additionally extend to scenarios which suggest inequality of treatment between individuals because of a protected characteristic. You must carefully consider any application where a person claims that their failure to become a British citizen was due to unfairness in the law. Cases that do not fit within the examples above should be referred to Nationality Policy Team.

You must take care not to equate situations where a person feels that their position within the law is unfair with 'legislative unfairness'. For example, a person born abroad to a parent who was a British citizen by descent might think it is unfair that they do not acquire British citizenship automatically. However, it has been Parliament's intention for many years that citizenship should normally only be passed on to one generation born overseas. The law itself is not unfair as it does not distinguish between people in the same circumstances on grounds of protected characteristics - age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, or sexual orientation.

Parliament has made conscious decisions about nationality law, and so cases where a person did not become a British citizen because of a legislative change will not normally fall within this provision. For example, some people born in the UK on or after 1 January 1983 to non-settled parents might feel that it is not fair that they did not acquire British citizenship whereas if they had been born before that date they would. Following that change, however, all children born on or after that date were treated the same on that basis.

Most cases involving British mothers and unmarried fathers will be covered by section 4C and 4F-I, and the new section 4K covers those who would have benefitted through a BOTC mother, or father with a connection to an overseas territory. In terms of people with British grandparents, Parliament's intention was that citizenship will normally only be passed on for one generation born overseas, and section 4L is not intended to change that, although you must consider each case on its merits and assess if there are exceptional circumstances.

## Act or omission of a public authority

You must check whether the person's inability to become a British citizen was as a result of an act or omission of a public authority.

'Public authority' can include a government department or local authority, but not a court or tribunal. If you are unsure whether an organisation or individual meets the

definition of ‘public authority’ you must refer the case, via your senior caseworker, to Nationality Policy Team.

The act or omission must have resulted in the person missing out on being, or being able to become, a British citizen, for example failing to make a time bound application or failing to meet statutory requirements because of official error. The person must clearly show how the claimed act or omission prevented them from being, or being able to become, a British citizen.

## Exceptional circumstances

Section 4L also allows for registration where the person did not become, or was not able to become, a British citizen because of exceptional circumstances relating to them. This is to be used where those exceptional circumstances prevented the person from acquiring citizenship: it is not intended to be used to cover cases where a person does not meet the requirements for other routes. Similarly, where a person’s circumstances might be exceptional or compelling, we cannot grant citizenship under this provision unless those circumstances prevented them from becoming a British citizen. There needs to be a clear link between their particular and exceptional circumstances and the failure to be, or become, a British citizen.

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# Considering an application

The following are scenarios where you might decide to grant an application, but this is not an exhaustive list. Each case must be considered on its own merits to see if the person would have been, or would have been able to become, a British citizen but for historical legislative unfairness, an act or omission of a public authority, or exceptional circumstances relating to that person.

## Children born in the UK to foreign diplomats

Section 4 of the British Nationality Act 1948 provided that a person born in the UK and colonies between 1949 and 1983 would be a citizen of the United Kingdom and Colonies (CUKC). They would go on to become a British citizen under the British Nationality Act 1981. However, children of diplomats did not benefit from birth in the UK.

Section 7 of the Consular Relations Act 1968 created an exception to this and sought to address the issue of children born to diplomats who had a British father. It stated that a person born in the UK would not be a CUKC if their **parent** both:

- was serving within the United Kingdom and Colonies as a member of consular post of any state
- was a national of that state

The child would, however, be a CUKC if their **father** was a citizen of the United Kingdom and Colonies.

This created an anomaly in that a person born in the UK to a dual national CUKC mother who was a foreign diplomat would be prevented from acquiring CUKC status, whereas a child born to a CUKC father in the same situation would not.

Similarly, if a person was born in the UK to a father who was a diplomat but not a CUKC, they would not have become a CUKC even if their mother was British.

Such cases are likely to be very unusual, but you should normally grant on the basis that the person would have become a British citizen but for **historical legislative unfairness.**

Evidence to be provided:

- the person's UK birth certificate
- evidence that the mother was a CUKC at the time of the birth – passport, naturalisation or registration certificate, or UK birth certificate
- evidence of the mother's employment (this may have already been established by HMPO if the person had applied for a UK passport)

## Children with British grandmothers in Crown Service

Section 14(2) of the British Nationality Act 1981 provided that a British citizen born before 1 January 1983 would not hold that status 'by descent' if his father was in Crown, designated or EU institution service at the time of the birth. This meant that a number of people were reclassified as British citizens 'otherwise than by descent' from that date and could pass their citizenship on.

There may be people who missed out on British citizenship because this section did not apply to women in the same way as men.

Applications based on the inability of women to pass on citizenship should normally be considered under section 4C, but if you have a case where a woman was in Crown, designated or EU institution service and her grandchild did not become a British citizen, whereas the grandchild of a man in the same position would, you should normally register on the basis of **historical legislative unfairness.**

Evidence to be provided:

- the person's birth certificate
- the mother's birth certificate
- evidence that the grandmother was a CUKC at the time of the birth – passport, naturalisation or registration certificate, or UK birth certificate
- evidence that at the time of the mother's birth the grandmother was in Crown, designated or EU institution service, and was recruited in the UK / an EU country as per section 14(2) of the Act

## People prevented from qualifying for citizenship because of Home Office act or omission

It may be appropriate to register a person using this provision if they had been wrongly prevented from resuming permanent residence in the UK following an absence. For example, if a mistake was made about their eligibility to enter the UK as a returning resident, a person may be unable to meet the statutory requirements for naturalisation.

Members of the Windrush generation are able to apply under the Windrush Scheme. They may also be able to apply for naturalisation, following changes made by the Nationality and Borders Act 2022, which introduced discretion over the requirement to have been in the UK on the first day of the residential qualifying period in exceptional circumstances. However, there may be other exceptional cases where a person cannot qualify for citizenship as a result of an incorrect Home Office decision. In such cases it may be right to register under section 4L on the basis of an **act or omission of a public authority**.

Evidence to be provided:

Much of the information required will be on Home Office systems, but you may need to see additional documentation to establish the circumstances.

## Children in local authority care

It may be appropriate to register a person under section 4L if they would have had an age-related opportunity to register as a British citizen (for example under section 1(3) of the British Nationality Act 1981 before they were 18), but this was missed because a local authority responsible for their care did not realise that an application needed to be made.

You must consider whether action could have been taken at the time that would have allowed the child to have been, or been able to become, a British citizen. It is possible that the temporary nature of care, and changes in parental responsibility, might have meant that citizenship matters were not considered. If it is clear that the child missed out on being, or being able to become, a British citizen as a result, you must normally register under section 4L on the basis of an **act or omission of a public authority**.

Evidence to be provided:

- evidence that the child would have had an entitlement to citizenship – birth certificate, details of the parents and their status, evidence of residence in the UK, and the parent's immigration status if appropriate
- evidence that the child was cared for by a local authority

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.

## Young adults adopted by British citizens in the UK

Applications involving an adoption should be considered by a specialist caseworker.

During the passage of the Nationality and Borders Act 2022, Ministers stated that we would normally use section 4L in the exceptional circumstances of a person adopted by a British citizen in the UK, where the adoption order was started before, but not finalised until after, their 18th birthday. Some cases may fit within the 'act or omission of a public body' limb of section 4L, but whilst each case will need to be considered individually, we anticipate most applicable cases are likely fall to under the exceptional circumstances limb.

Section 1(5) of the British Nationality Act 1981 provides that a child adopted by an order in a UK court will become a British citizen from the date of the order if either of the adopters is a British citizen. That section only applies to 'minors' and so a child can only benefit if they are under the age of 18 on the date of adoption.

However, adoption law in some parts of the UK allows an adoption to take place after the young person's 18th birthday. In England and Wales, the Adoption and Children Act 2002 allows a young person to be adopted up to the age of 19, as long as the adoption process began while they were still a minor. In Scotland, the

Adoption and Children (Scotland) Act 2007 places no upper age limit on the age of adoption if the application was made before the person's 18th birthday. Northern Ireland do not permit adoptions after a person's 18th birthday.

General information about adoption of children can be found in the adoption guidance. Information about registration of children adopted outside the UK can be found in the Registration as a British citizen: children guidance.

When considering a case, you must bear in mind that the court has determined that the young person is now part of the family of the British citizen parent and so deal with the application as sensitively and quickly as possible. The relationship between the young person and the adopter has already been accepted by the family court, and the courts will likely have heard directly from parties and considered evidence of the relationship that may not be available to the caseworker.

You should normally grant an application under section 4L where a child is adopted by Order in the UK and:

- the application for adoption was made before the person's 18th birthday.
- the adoption order is made after the young person has turned 18
- the adoptive parent is a British citizen, and the child would have become a British citizen under section 1(5) of the British Nationality Act 1981 if they had been under 18 at the time the adoption order was made
- no information has come to light to prompt concerns about the genuineness of the relationship with the adoptive parent - if you have any concerns in respect of the relationship, these must be weighed against the fact that a court has decided that adoption was appropriate, taking into account all the relevant information

You must discuss the case with your senior caseworker if you are proposing to refuse the application.

You must normally register under section 4L. This is on the basis of **exceptional circumstances relating to that person.**

Evidence to be provided:

- the adoption order
- documentation that shows when the adoption application was made - this might be a copy or acknowledgement of the adoption application made to a Family Court, official paperwork, or stated on the order itself
- any additional information about the adoption and its timing that the parents wish to provide
- evidence of the parent's British citizenship – passport, naturalisation or registration certificate, or UK birth certificate issued before 1983

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# Good character

Section 4L(4) states that, in considering whether to grant an application under this section, the Secretary of State may take into account whether the applicant is of good character.

If the person would have been able to acquire British citizenship through registration or naturalisation (but for historical legislative unfairness, an act or omission of a public authority, or exceptional circumstances relating to that person), under a provision that had a good character requirement, you must assess whether they are of good character. Any assessment must be made based on the date of decision, rather than at the time they could have applied.

The relevant provisions are:

- naturalisation under section 6(1) or 6(2)
- registration under one of the following sections:
  - 1(3) – child born in the UK whose parent became a British citizen or became settled in the United Kingdom while the child was a minor
  - 1(3A) – child born in the UK whose parent becomes a member of the armed forces while the child is a minor
  - 1(4) - a person (of any age) who was born in the UK and lived there for the first 10 years of their life
  - 3(1) - discretionary registration of a child under 18
  - 3(2) - a child born outside the UK to a British citizen by descent parent, and that parent has lived in the UK for 3 years before the birth
  - 3(5) - a child born outside the UK to a British citizen by descent parent, and the child and both parents have lived in the UK for 3 years
  - 4(2) – registration based on 5 years residence
  - 4(5) – registration based on Crown service.
  - 4A – registration of a British overseas territories citizen
  - 4D – children born outside the UK to members of the armed forces
  - 5 – British overseas territories citizens with a connection to Gibraltar
  - 10(1) or 10(2) - registration following renunciation of citizenship of UK and Colonies
  - 13(1) or 13(3) - registration following renunciation of British citizenship
- registration under section 4F, if the registration was on the basis that the person could have qualified under section 1(3), 3(2) or 3(5), had their parents been married

Where a person would have acquired citizenship automatically (but for historical legislative unfairness, an act or omission of a public authority, or exceptional circumstances relating to that person), we will not ask them to provide evidence that they are of good character as part of their application. A person who missed out on an automatic claim to citizenship will not normally be refused on character grounds. If you have a case, where the person could have become a citizen automatically, but you have serious concerns about their character, the case should be referred to a senior caseworker.

## Case studies

The following are fictional examples that illustrate how we expect to consider applications under this provision. However, they are very high level: when considering a case, you should look at the full facts available to assess whether the person falls within one of the 3 limbs of section 4L and consider each case on its own merits. (The case studies are based on an application date in 2022.)

### Example 1 – child in care

Sara was born in the UK in 2002. Her parents were in the UK with limited leave at the time and so Sara did not become a British citizen automatically. From the age of 11 to 18 Sara was looked after by the local authority. Sara has learned that her parents were granted indefinite leave to remain (ILR) before she was taken into care. As such, an application could have been made to register her under section 1(3) before her 18th birthday. The local authority has said that they had not realised that she would have qualified.

As Sara could have become a British citizen but for an act or omission of a public authority, it may be appropriate to register her under section 4L.

### Example 2 – kidnapped as a child

Tom came to live in the UK aged 3 in 2005. His mother was here on a work route and Tom was given leave to remain in line. When he was 8, his parents split up, and Tom was kidnapped by his father and taken overseas. Despite the efforts of the police and FCDO, Tom was not able to return to the UK until after the age of 18. In the meantime, his mother was granted ILR in 2012 and then naturalised as a British citizen in 2013.

Tom would have been in the UK but for the exceptional circumstances of having been kidnapped (as opposed to family decisions to live elsewhere). If he had been in the UK, he could have applied for registration under section 3(1). It may therefore be appropriate to register under section 4L.

### Example 3 – mother in civil partnership

Alfie was born in the USA in 2003. At the time his birth mother was a US citizen and her female civil partner a British citizen. From 6 April 2009, a mother's female partner is treated as the parent of the child for nationality purposes, and British women in civil partnerships can pass on nationality. Alfie claims his parents intended to apply to register him as a British citizen under section 3(1), but one of them had been seriously ill and so they did not get around to it before his 18th birthday. He has never lived in the UK.

Alfie could have applied for registration before his 18th birthday and would have met the criteria set out in guidance for when registration under section 3(1) would normally be appropriate (see the guidance on registering children of civil partners). As the law treated children of civil partners differently than those of married partners

before 2009, it may be appropriate to register on the basis of historical legislative unfairness.

## Example 4 – absences beyond applicant's control

Nadiya came to the UK in 2012 with a work visa. It has been established that she was a victim of modern slavery, working for a family who took her with them when they moved to the UAE in in 2018. Nadiya has been back in the UK since 2021 and has been granted ILR exceptionally. Because of her absences, she will not qualify for naturalisation until 2026.

Had Nadia not been removed from the UK whilst enslaved, she may have been able to apply for naturalisation from 2018, had she been able to meet all of the requirements. You would need to assess whether she would have been able to first qualify for settlement and been able to meet the knowledge of language and life in the UK requirements.

Nadiya may now qualify for naturalisation, taking into account the changes made by the Nationality and Borders Act 2022 which allow you to exercise discretion over the requirement to have been in the UK at the start of the qualifying period in special circumstances. She may wish to apply for naturalisation now, if she considers it may be more straightforward than trying to show that she would have qualified at an earlier point for the purposes of a 4L application.

## Example 5 – passport issued in error

Hannah was born in the UK in 1984. She has been issued with British passports since the age of 4. When she applied to renew her passport earlier this year, she presented her full birth certificate and it was realised that her parents had been employed as diplomatic staff at the Australian High Commission at the time. This means that Hannah did not become a CUKC and so has never been a British citizen. Both parents left the High Commission employment when Hannah was 10 and the family have been living/working in the UK since.

Hannah's parents might have applied to register her as a British citizen whilst she was a child, had she not been issued British passports in error. However, as she was resident in the UK for the first 10 years of her life, she will still have an entitlement to registration under section 1(4) of the British Nationality Act 1981.

Hannah could apply under section 1(4) - or section 4L on the basis that she could have qualified for registration under section 1(4) from the age of 10. Both those options would require a fee and the same documents (birth certificate and evidence of residence), and both would give British citizenship otherwise than by descent. The more straightforward option for Hannah is likely to be an application under section 1(4), as she would only need to provide the documents and not establish that one of the three statutory limbs was met.

## Example 6 – earlier application refused

Ravi applied to come to the UK on a work visa in 2018 but his application was refused as the salary his prospective employer was offering was not sufficient. He then applied again in 2020 and was granted. He entered the UK in September 2020. He claims that if his earlier application had been granted, he would now be able to apply for naturalisation.

Ravi does not meet one of the 3 limbs for section 4L: he was not prevented from becoming a British citizen by historical legislative unfairness, or an act or omission of a public authority, and his particular circumstances are not exceptional.

## Example 7 – born after 1 January 1983

Aisha was born on 2 January 1983 in the UK. Her parents were not settled in the UK at the time, and so she is not a British citizen. She claims that had she been born on her due date of 28 December 1982 she would have been a British citizen automatically, as a person born in the UK before 1 January 1983 became a British citizen irrespective of their parents' status (unless a diplomat or enemy alien).

Aisha does not meet any of the 3 limbs for section 4L. The change in legislation was not historical legislative unfairness: it applied to all those born after the British Nationality Act came into force. Her particular circumstances are not exceptional as many people were born on or after 1 January 1983. There are registration routes for those born in the UK after that date: Aisha may be able to apply under section 1(4).

## Example 8 – working overseas

Charles would have met the requirements for naturalisation in 2015 – he had been in the UK for over 5 years and had indefinite leave to remain for more than 12 months and had met the knowledge of language and life in the UK requirement for ILR. However, he lost his job and could not afford to apply. He found another job with an international company and has been posted to France for the last 5 years. He therefore does not meet the requirements for naturalisation. He claims that, but for the fact that he had lost his job and had to work overseas, he would have been able to naturalise in 2015.

Charles does not meet any of the 3 limbs for section 4L: his working overseas would not be recognised as exceptional circumstances for section 4L.

## Example 9 – pandemic absences

Duncan would have been able to meet the requirements for naturalisation in 2020 – he had been living in the UK for over 5 years and had indefinite leave to remain for more than 12 months and had met the knowledge of language and life in the UK requirement for ILR. However, he had gone to visit family in Australia and was stranded there during the pandemic. Having returned to the UK, he wants to apply under section 4L on the basis that he could have become a British citizen but for exceptional circumstances.

Duncan can still make an application for naturalisation. Excess absences as a result of the pandemic will be taken into consideration – see the naturalisation guidance. As such, his absence overseas is unlikely to be recognised as exceptional circumstances for registration under section 4L.

## Example 10 – grandmother born in the UK – cannot assume the family would have moved to the UK

Rachel's grandmother was born in the UK in 1945. Her mother was born in the USA in 1965 and registered as a British citizen under section 4C in 2015, on the basis that she had a UK born mother. Rachel was born in Canada in 1996. Rachel claims that, had the law been different, her mother would have become a British citizen automatically and could have come to the UK when Rachel was a child, allowing Rachel to register as a British citizen under section 3(5) of the British Nationality Act 1981.

Although historical legislative unfairness meant that Rachel's mother did not become a British citizen automatically, it did not prevent Rachel from becoming one. Citizenship could not normally be passed on for more than one generation born abroad, and Rachel would not have been able to become a citizen had women previously been able to pass on citizenship. Whilst she maintains that her mother might have come to the UK had she been a citizen, that relies on hypothetical assumptions. She may be able to apply for a UK Ancestry visa to come to the UK.

## Example 11 – lost CUKC on independence

Clive was born in Guyana in 1955. Both his parents and all his grandparents were born in Guyana. Clive's family moved to the UK in 1965, where they lived for 5 years. In 1966 Guyana became an independent Commonwealth country, and Clive became a citizen of Guyana. As neither Clive nor his father or grandfather was born, naturalised or registered as a citizen in a country that remained part of the UK and Colonies at that time, or a protectorate or protected state, Clive lost his citizenship of the UK and Colonies (CUKC). He claims that his parents could have registered as citizens of the UK and Colonies while they were resident in the UK and registered him as a child.

The fact that Clive ceased to be a CUKC was as a result of the independence arrangements of Guyana. It was not historical legislative unfairness: it applied to all those connected to that territory irrespective of any protected characteristics and was in line with independence arrangements of other countries. The fact that Clive's family did not apply to register him as a citizen would not normally be considered exceptional circumstances. Some Commonwealth citizens who are members of the Windrush generation are able to apply under the Windrush Scheme.

## Example 12 – grandmother born in the UK – possible route to citizenship through section 5(1)(b) of the 1948 Act

Dwight was born in the USA in 1972. His paternal grandmother was born in the UK in 1925. Dwight's father was born in the USA in 1950. Dwight's father was not a citizen of the UK and Colonies by descent, because women could not pass on citizenship at that time. He has since registered as a British citizen under section 4C (in 2010). If women had been able to pass on citizenship at the time, Dwight's father would have become a CUKC by descent and could have registered Dwight's birth at a UK consulate within a year of the birth.

Under section 5 of the British Nationality Act 1948 there were certain scenarios where a person could have become a CUKC, despite their father being a CUKC by descent. The Supreme Court's decision in the case of Romein took into account the fact that British mothers could not register their children's birth at a British consulate, and we have recently legislated to allow a person who would have qualified under section 5(1)(b) to benefit under section 4C, despite the fact that no registration took place. If Dwight can establish that he would have had a claim under section 5(1)(b), having been born in a foreign (and not Commonwealth) country, had women been able to pass on citizenship in the same way as men, registration under section 4L might be appropriate.

## Example 13 – man married to CUKC woman

George was born in the USA in 1952. In 1975 he married Eleanor, who was a CUKC, because her father had been born in the UK. George claims that if the law had treated men and women equally, he would have been able to register as a CUKC under section 6(2) of the British Nationality Act 1948 – in the same way as a foreign woman married to a CUKC man.

Section 4L defines 'historical legislative unfairness' as including circumstances:

> "where a person would have become, or would not have ceased to be, a British subject, a citizen of the United Kingdom and Colonies or a British citizen, if an Act of Parliament or subordinate legislation (within the meaning of the Interpretation Act 1978) had, for the purposes of determining a person's nationality status… treated males and females equally".

This was generally intended to cover cases where people would have become British automatically rather than by registration or naturalisation.

The fact that women could acquire British nationality simply through marriage was reflective of society at that time, and that certain rights and entitlements derived from a woman's marriage to her husband (and women previously lost British subject status based on a husband's nationality). Section 4L predominantly seeks to address previous unfairness where women or their children missed out on citizenship. However, the intention in addressing inequalities in such circumstances is to 'level-up' so that a woman has the same rights as a man. Section 6(2) of the 1948 act reflected the then assumption that a woman's status should follow that of her

husband, which in turn, reflected the wider underlying policy that citizenship could only be acquired via the male line. We do not think it appropriate to replicate that position for men. Unless there are exceptional circumstances, it would not normally be considered appropriate to register George under section 4L.

## Example 14 – section 9 of the British Nationality Act 1981

Hanif was born in Belgium in 1985. His mother was a British citizen by descent. Section 9 of the British Nationality Act 1981 was a transitional provision that lasted for 5 years after the act came into force on 1 January 1983. It continued the acquisition of citizenship by descent to a second generation, where a child's birth was registered at a British consulate in a foreign country. A man who was a British citizen by descent could register his child's birth at a consulate within 12 months of the birth, and the child would become a British citizen.

If women had been able to pass on citizenship equally with men, Hanif could have become a British citizen through consular registration. Registration under section 4L might therefore be reasonable.

As section 9 was a registration route in the legislation, rather than automatic acquisition, Hanif would need to pay the relevant fee and meet the good character requirement.

## Example 15 – renounced CUKC status

Grace was born in Kenya Colony in 1955 and so was a citizen of the UK and Colonies by birth. Her mother was born in the UK. Grace did not become Kenyan on independence, as she did not have a parent or grandparent born there. However, she acquired Kenyan citizenship by registration and renounced her citizenship of the UK and Colonies in 1980. Section 10 of the British Nationality Act 1981 allows a person to resume British citizenship where they acquired that status through a qualifying connection to the UK, including having a father born there. Grace claims that she should be able to benefit under section 10, on the basis of her UK born mother.

The legal requirement for section 4L is about someone who would have been or been able to become a citizen. Grace was already a CUKC but renounced that status. She did not miss out on becoming a citizen because she had a UK born mother rather than a UK born father. Instead, she acquired citizenship in her own right, but actively chose to renounce it. Section 10(1) reflects the historical reality that citizenship could only be acquired by descent through the paternal line and that it is such a claim, previously renounced, which a person is able to resume. We would not therefore expect to register Grace under section 4L. She may, however, be able to apply for a UK Ancestry visa.

## Example 16 – did not register under section 3(2)

Aiko was born in Japan in 1988. Her father was a British citizen by descent: his father was born in the UK. Aiko's parents did not make an application for registration

under section 3(2) within 12 months of her birth (the 12 month time limit was removed in 2010, allowing an application to be made at any time before a person's 18th birthday). Aiko claims that if the law had changed earlier, her parents could have applied to register her while she was under the age of 18.

If there were exceptional reasons, there was discretion to register a child up until the age of 6 under section 3(2), or an application could be made up to the age of 18 under section 3(1). We do not normally expect to use section 4L where people were simply born before or after a change in the law. Section 3(2) applied equally to all children born at the same time point, and so this would not be considered to be historical legislative unfairness.

## Example 17 – grandmother born in the UK – child born before 1949

Ingrid was born in Sweden in 1939. Her mother was also born in Sweden, and her maternal grandfather was born in the UK. If women had been able to pass on citizenship in the same way as men, Ingrid claims her mother would have registered her birth at the British consulate, allowing Ingrid to become a British subject.

We have amended the legislation in relation to section 4C of the British Nationality Act 1981 to reflect the judgement in the Supreme Court case of The Advocate General for Scotland (Appellant) v Romein (Respondent) (Scotland). That judgement applies to consular registration cases where the applicant would have qualified under section 5(1)(b) of the 1948 Act. Ingrid was born before the 1948 act came into force in 1949, but if women had been able to pass on nationality in the same way as men, she could have become a British subject through consular registration. It may be appropriate to register Ingrid under section 4L if such consular registration would have meant that she went on to become a British citizen.

## Example 18 – grandmother born in the UK – potential 3(2) claim

Alan was born in South Africa in 1984.  Alan's maternal grandmother was born in the UK and his mother was born in South Africa. Alan's mother lived in the UK for 3 years while she was a student from 1979 to 1982. Alan's mother registered as a British citizen under section 4C in 2004. Alan claims that if his mother had been able to register as a British citizen before he was 18, he would have been able to register as a British citizen under section 3(1) of the British Nationality Act 1981.

Our guidance on section 3(1) states that we would normally register where the child was born before the parent registered under section 4C and, had the parent been able to become a British citizen automatically, the child would be a British citizen or have an entitlement to be registered under section 3(2) or 3(5). You must consider the circumstances of Alan's case. If you are satisfied that he missed out on becoming a British citizen because of gender discrimination, registration under 4L might be appropriate. However, you would need to be satisfied that there would have been a definite section 3(2) entitlement, based on actual events, rather than relying

on speculation that the mother might have come to the UK if she was a British citizen.

## Example 19 – woman married to a man with a British mother

Margaret, a Canadian national, married her Canadian husband Hank in 1965. Hank's mother was born in the UK in 1920. Margaret claims that if women had been able to pass on citizenship before 1983, Hank would have been a citizen of the UK and Colonies and she could have applied for registration under section 6(2) of the British Nationality Act 1948.

The definition in Section 4L of 'historical legislative unfairness' includes circumstances:

> "where a person would have become, or would not have ceased to be, a British subject, a citizen of the United Kingdom and Colonies or a British citizen, if an Act of Parliament or subordinate legislation… had, for the purposes of determining a person's nationality status… treated males and females equally".

We cannot be certain in this case that Margaret would have become a citizen, as it would have been conditional on her choosing to make an application (with the possibility of losing another nationality that she might have held). As this would rely on hypothetical assumptions about potential behaviour many years ago, the application would not normally be successful.

## Example 20 – birth not registered at a consulate

Kurt was born in the USA in 1967. His paternal grandfather was born in the UK and his father was a CUKC by descent. Kurt's birth father did not register Kurt's birth at the British consulate within 12 months of the birth, and so Kurt did not become a CUKC under section 5(1)(b) of the British Nationality Act 1981. Kurt has referred to the changes made in the Nationality and Borders Act which allow us to overlook the fact that a person's birth was not registered at a British consulate when considering an application under sections 4C and 4I. He suggests that he should also be able to benefit on that basis.

The fact that a person with a British 'by descent' mother, or unmarried British father, could not have their birth registered at a British consulate amounted to historical legislative unfairness. This was in contrast to a child with a British father, who did have that opportunity but was not registered. In applying section 4L we would want to register those who did not have an opportunity to become British because of historical legislative unfairness, but not those whose parents had that opportunity but did not take it.

Kurt did not miss out on British citizenship because of historical legislative unfairness, but because his parent failed to act. (In the Romein case (see example 17), Lady Hale recognised that the fact that a person with a British 'by descent' mother could not have their birth registered at a British consulate amounted to historical legislative unfairness. This was in contrast to a child with a British father,

who did have that opportunity but ‘for whatever reason’ was not registered.) As such, Kurt does not meet the requirements for registration under section 4L.

## Example 21 – did not become a British overseas citizen

Ali was born in Pakistan to a mother who was a citizen of the UK and Colonies at the time of his birth. If women had been able to pass on citizenship at that time, he could have become a citizen of the UK and Colonies. However, he would not have qualified for a right of abode in the UK, and so would have become a British overseas citizen.

Section 4C of the British Nationality Act 1981 was inserted by the Nationality, Immigration and Asylum Act 2002. This provides that a person can apply to be registered as a British citizen if they would have become a British citizen had women been able to pass on citizenship in the same way as men. Section 4C created a registration route for those who would have become citizens of the United Kingdom and Colonies with a right of abode, and so become **British citizens**, had women been able to pass on citizenship in the same way as men. It does not provide for those who would have become **British overseas citizens** on 1 January 1983 but for the fact that women could not pass on citizenship under the previous legislation.

Ali claims that if women had been able to pass on citizenship, he would have been a British overseas citizen. He states that the impact of this was that he would not have been a citizen of Pakistan and so could have applied under section 4B, which is a provision created for people who had no other nationality. However, he has been able to benefit from being a citizen of Pakistan in terms of travel and residence, and it is possible that he might have applied for that status had he not acquired it automatically. We cannot therefore assume that, if Ali had become a British overseas citizen, he would not have acquired another nationality and so have qualified to register as a British citizen under section 4B many years later. We cannot therefore assume that Ali would have become a British citizen had the law treated men and women equally, and so he does not meet the criteria for section 4L.

## Example 22 – person from St Kitts did not qualify under the unmarried fathers provisions

Mary was born in St Kitts before the British Nationality Act 1981 came into force on 1 January 1983. Her father was born in Montserrat. Mary became a British dependent territories citizen (BDTC) under that Act, but when St Kitts became independent, she did not retain British dependent territories citizenship, as her parents were not married. If her parents had been married, she would have remained a BDTC and gone on to become a British citizen.

Mary cannot register as a British overseas territories citizen and British citizen under section 17F of the British Nationality Act 1981 on the basis of her BOTC father. This is because the general conditions for that section (at section 17B) state that the person must never have been a British overseas territories citizen or a British dependent territories citizen (that requirement was intended to cover people who had renounced or been deprived of British dependent/overseas citizenship).

People who became a BDTC through a St Kittian father would not now be BOTCs, even if unmarried fathers had been able to pass on citizenship before July 2006. However, Mary's father was born in Montserrat and so she would have become a BOTC had her parents been married.

It may therefore be appropriate to register Mary under section 4L.

## Example 23 – adoption

Richard was born in South Africa in 1965. He was adopted by 2 CUKC parents in South Africa in 1966. The adoptive father was a CUKC by descent, the adoptive mother was a CUKC by birth.

A child who was adopted before 1 January 1983 outside the UK and Islands by a CUKC did not automatically acquire CUKC status.

Richard has applied for registration under section 4L, claiming that if women had been able to pass on citizenship, he would have been registered under section 7 of the BNA 1948, which was at the Secretary of State's discretion. However, earlier guidance suggests that registration of children of CUKC adoptive fathers was not a certainty: caseworkers were also advised to look at other factors, including UK links in the form of visits, schooling and future intentions.

In considering whether to register Richard, you must consider whether it is likely that he would have been registered under section 7 as a child, taking into account any UK residence and connections.

## Example 24 – Parent has registered under section 4L

Claude's father Dwight (see example 12) has been registered under section 4L.

Claude is aged 28. He has pointed out that if his father had any future children, they would be British citizens automatically as Dwight is now a British citizen otherwise than by descent.

You must consider whether Claude could have become a British citizen, had women been able to pass on citizenship in the same way as men. In this case, Claude is the third generation born outside the UK. Had women been able to pass on citizenship, the only way he would have been able to become a British citizen would have been if he would have qualified under section 3(2) or 3(5) of the British Nationality Act 1981, had his father become a British citizen by descent. You must therefore check if Dwight had lived in the UK for a continuous period of 3 years at any point before Claude's birth, or if the family lived in the UK for a 3 year period before Claude's eighteenth birthday. If so, and Claude would have qualified under section 3(2) or 3(5), it may be appropriate to register.

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