



Home Office

Legitimacy and domicile

Version 3.0

This guidance tells His Majesty's Passport Office staff about the laws on legitimacy and domicile, for customers born before 1 July 2006 where the claim to British nationality is through a father.

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About: Legitimacy and domicile

This guidance tells His Majesty's Passport Office staff about the law on legitimacy and how to confirm a customer, born before 1 July 2006, is the legitimate child of their father, for nationality purposes. It also tells staff how to confirm where the customer's father was domiciled (the place they regard as their homeland), if needed, to establish a claim to British nationality.

If you must confirm who is a customer's legal parent for nationality purposes, you must follow definition of parent for nationality purposes guidance.

If you are dealing with an application with a connection to the Philippines, you must follow Extra documents for children born to Philippine mothers guidance.

The [British Nationality \(Proof of Paternity\) Regulations 2006](#), amended the British Nationality Act 1981 [section 50\(9\)\(b\)](#) relating to legitimacy. This guidance therefore does not apply to:

- a customer born after 1 July 2006
- a customer whose parents are:
 - the same-sex (whether they are married, in a civil partnership or not)
 - in an opposite-sex civil partnership (introduced 2 December 2019)
- a customer whose claim to British nationality is reliant on their mother (irrelevant whether they were born before or after 1 July 2006)

If you, the examiner, have an application like this, you must use the definition of parent for nationality purposes guidance.

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 Guidance & Quality, Operating Standards.

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 Guidance & Quality, Operating Standards.

Publication

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

- version **3.0**
- published for Home Office staff on **26 September 2022**

Changes from last version of this guidance

This guidance has been updated to reflect the change in our sovereign from Her Majesty Queen Elizabeth II to His Majesty King Charles III.

Related content

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Legitimacy: what it is and how we confirm a person is legitimate

This section tells HM Passport Office staff what legitimacy is for nationality purposes.

Usually, being a legitimate child means a customer's parents are legally (and lawfully) married to each other, or in a civil partnership, at the time of their birth. Legitimation is defined in UK law however it is common law that describes legitimacy and illegitimacy.

For the purposes of a British passport application, HM Passport Office may have to confirm a customer, born before 1 July 2006, is their father's legitimate (legal) child, to have an automatic claim to British nationality.

Who we consider to be legitimate

[Section 50\(9\) of the British Nationality Act 1981 \(BNA'81\)](#) applies to people born before 1 July 2006 and states, that to have a claim to British nationality through their father, that person must be his legitimate child.

Legitimacy depends on where the father was domiciled at the time of the child's birth. A child will be considered legitimate, for the purposes of the British nationality law:

- if their parents were married at the time of their birth
- if their parents were not married at the time of their birth, but got married to each other at a later date (subsequently marry), if the laws of the country where their father was domiciled (at the time of the marriage) recognises the customer as legitimated by the marriage
- by the laws of the country where their father was domiciled at the time of the birth, regardless of whether their parents were married or not

If an application involves a customer born to parents in a polygamous or bigamous marriage, you, the examiner, must consider how a polygamous marriage or a void marriage can affect legitimation.

Customers may discover later that their mother's husband is not their biological father. As this means they were not legally born to him this can affect their claim to British nationality. See legitimacy: fathers details change after passport was issued.

Parents are not married at the time of the birth

If the parents are not married at the time of the birth you must consider the father's place of domicile at that time. Their father may be domiciled outside the UK, therefore you must check the laws for that country.

The country the father is domiciled in may have no concept of legitimacy or illegitimacy and if this is the case, the customer is considered their father's legitimate child whether or not he subsequently married their mother.

Parents are married at the time of birth

If the customer's parents were married to each other at the time of their birth, [section 50\(9\)\(b\) BNA'81](#) applies and means the customer is their father's legitimate child. See legitimacy: fathers details change after passport was issued.

Parents marry after the birth

If a customer's parents were not married when the customer was born (before 1 July 2006), but they marry later, their subsequent marriage may legitimise an illegitimate birth. See [section 47\(1\) and 47\(2\) BNA'81 and section 23 BNA'48](#).

You must first consider where their father's domicile is at the time of the birth and subsequent marriage to the customer's mother. Their father may be domiciled outside the UK, therefore you must check the laws for that country.

You must look at where their father is domiciled at the time of both events to see if: that country's law:

- distinguishes between legitimacy or illegitimacy for unmarried parents
- accepts a subsequent marriage legitimates the customer's birth

Re-register a UK birth after a marriage

A customer born in the UK may have their birth re-registered if their parents marry, after they were born. See birth registration guidance.

Legitimacy: when the father is domiciled outside the UK

Many countries do not distinguish (recognise a difference) between legitimate and illegitimate births and whether the parents were married or not has no bearing.

Where the parents are not married a customer can have a claim to British citizenship through their father if, he was domiciled in a country whose laws (at the time of the customer's birth) do not recognise a difference between legitimate and illegitimate births.

This can apply to customers born in the UK or overseas as it is the father's domicile which is important.

In some countries, they may have changed their law after the customer was born and no longer distinguish between legitimacy and illegitimacy. If a customer is born after the change in the country's law, there is no distinction.

However, the change is not retrospective. If a customer is born before the change in the country's law, it is only a subsequent marriage that can legitimise an illegitimate birth for the purposes of a British passport application (see [section 47\(2\) BNA'81](#)) and not the change in that country's law. A subsequent marriage will legitimate the birth when the marriage takes place after the date the law was changed.

You must check Knowledge Base for laws on legitimacy, if the father is domiciled outside the UK. If there is no information for a country, you must send a guidance referral, to Guidance & Quality, Operating Standards, for advice.

Legitimacy: examining an application

When examining an application that relies on legitimacy for the customer's claim to British nationality, you must check the application and documents provided to confirm:

- are the customer's parents married, at the time of the birth
- the father's place of domicile at the time of the customer's birth, if the parents were not married at the time of the birth
- the father's place of domicile at the time of the parent's marriage, if the customer was considered illegitimate at the time of their birth and the parents married after the birth

You must send the father, a domicile questionnaire to complete, if both:

- the parents were not married to each other at the time of the birth
- the father's place of domicile is not clear from the information available and the place of domicile will make a difference to whether or not the customer has a claim to British nationality

In some cases, there is no need to send a domicile questionnaire. For example, a customer's parents marry after their birth and their father could be domiciled UK or Sri Lanka. Both of these countries recognise that a subsequent marriage between a child's parents legitimises their birth. Therefore, it is irrelevant where the father was domiciled at the time of the subsequent marriage, as the child would have a claim to British nationality.

If a customer's claim to British nationality is through legitimation, you must case note the customer's British nationality status and where you have applied extra sections of the BNA'81. For example, your case note may say:

“Customer is BC 2(1)(a) BD read with 47 BNA’81 parents married [INSERT DATE] father domiciled [INSERT COUNTRY]”

If you have any fraud or safeguarding concerns on an application (for example, concerns over the validity of a marriage), you must refer the application to the Counter Fraud team (CFT).

Legitimacy: examining an application on the Digital Application Processing system

If you are unsure how to deal with the application on the Digital Application Processing (DAP) system or DAP does not have the functionality to process the application (for example, does not have the correct letter to be sent to the customer). You must:

1. Select **I can't do this right now**.
2. Add a case note to explain why you cannot deal with the application.

This will send the application to your operational team leader (OTL). The OTL will manage the application on DAP, using DAP: team leader management actions guidance.

Documents needed to confirm legitimacy: born before 1 July 2006

The customer must send documents linking them to their father, for example, their parents' marriage certificate (where they have married) and their own full birth certificate to confirm legitimacy. If the customer cannot provide these documents, see Supporting documents not available.

However, you do not need to accept the claim if there is doubt or there is a balance of probability, the evidence shows the claimed father is probably not the father. For example, where the parents' marriage is annulled, or evidence suggests that someone else is the father.

The customer's father must be named on their birth certificate, for them to have an automatic claim to British nationality, through him. If the customer's claimed father is named on the birth certificate, then, unless you have evidence to the contrary, you can be confident the customer was born to him.

If the customer's father is not named on their birth certificate, the customer will need to provide evidence that the claimed father is their father. This might be, but not restricted to:

- a statutory declaration made by each parent or, if the parents are dead, by someone who knows the circumstances of the child's birth

- court orders
- other evidence of paternity
- DNA test results

In addition to standard evidence, you may need to ask for a domicile questionnaire and additional corroborative evidence.

DNA evidence confirming legitimacy

You must not insist on DNA evidence from a customer, as we do not have the legal power to demand it. DNA may confirm a biological connection but does not, on its own, confirm legal parentage.

If more evidence is needed and the customer volunteers DNA evidence, you must follow the DNA testing for UK and Overseas applications guidance.

Any DNA evidence must be considered together with the definition of parent for nationality purposes guidance.

Decision making: no claim or withdrawing

You, the examiner, must refer an application to be reviewed by an appropriately trained examiner or your operational team leader (OTL), if:

- you are unable to deal with the application or make a decision
- the customer appears to have no automatic claim to British nationality (you must not reject the passport application)

The OTL or appropriately trained examiner can request support and advice about an application from the Quality Examination Support team (QuEst).

If a decision is made not to issue the child with a British passport and if necessary, confirmed using a guidance referral to Guidance & Quality, Operating Standards, you must follow the:

- Refusing Passport Applications and Passport Facilities guidance (if you are refusing an application for a first British passport)
- Withdrawing Passports and Passport Facilities guidance (if you are dealing with an application to renew or replace a passport or withdraw a live passport)

Legitimacy: fathers details change after passport was issued

Customers may alert us to a change in their parents' details when they reapply to renew or replace their existing British passport or reapply after they have previously

been refused a passport. This could be in the parent details section of the application or in the supporting evidence they send.

If different parents are given this could affect their claim and you must review the customer's claim to British nationality. You must check the claim again because the customer:

- may no longer have an automatic claim to British nationality through the person initially named as their father, because they are not his child, legally and legitimately born to him (for example, because he is not their biological father)
- may or may not have an automatic claim through the person, the evidence provided now confirms is their father

If the customer, appears to have no automatic claim to British nationality, see, decision making: no claim or withdrawing.

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Legitimacy: polygamous marriages

This section tells HM Passport Office staff what a polygamous marriage is if they are recognised as valid or legal and how to deal with an application where a customer's parent is in a polygamous marriage.

In some cases, you (the examiner) may find that a customer is born to parents, who are in a polygamous marriage (their father has multiple wives).

A polygamous marriage is when a man legally has multiple spouses (a woman with multiple spouses is called a polyandrous marriage). Not every country allows polygamy, bigamy is where polygamy is not legal, and a person cannot have multiple spouses.

A person married to one person at a time, is called a monogamous marriage. In the UK, all marriages that take place in the UK must be monogamous and follow the relevant legislation to be legally valid.

A customer born, before 1 July 2006, to parents, in a polygamous marriage may have an automatic claim to British nationality. If they are recognised as their father's legitimate child because the marriage is recognised as valid (for the purposes of a British passport application).

If a customer is born on or after 1 July 2006, you must see definition of parents guidance.

Recognising a polygamous marriage as valid

To confirm a polygamous marriage is recognised as valid (for the purposes of a British passport application), you (the examiner) must look at where the:

- marriage took place
- customer's father is domiciled at the time of the marriage

See Knowledge Base to see if a country allows polygamous marriages.

For a polygamous marriage to be valid in the UK, all parties must both:

- have married in a country that allows polygamy
- be domiciled in a country that allows polygamous marriages

Polygamous marriages entered into by parties who were domiciled in the UK or in any country whose laws do not allow polygamy, are called a void marriage.

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Legitimacy: void marriages

This section tells HM Passport Office staff what a void marriage is and how to deal with an application where a customer's parent is in a void marriage.

A void marriage is a marriage that is unlawful or invalid under the laws of the jurisdiction where it is entered. This could be a bigamous marriage or a religious marriage that has not been registered and recognised by the authorities of that country. For example, marriages in the UK must be licenced and registered with the relevant registrar's office.

A polygamous marriage is treated as a void marriage, under section 11(d) of the Matrimonial Causes Act 1973 (as amended), if:

- it was entered into after 31 July 1971
- either party entering into the marriage was domiciled in England and Wales, at the time of the marriage

A customer born into a void marriage can be treated as legitimate under [section 1\(1\) of the Legitimacy Act 1976](#) and may have a claim to British nationality (see Legitimacy: a parents marriage is void).

Legitimacy: a parents marriage is void

In some cases where a customer's parents are in a void marriage, the customer may have a claim to British nationality under [section 1\(1\) of the Legitimacy Act 1976](#). For example, their parents are in a polygamous or bigamous marriage, at the time of their birth, and:

- it is their father's second, third or subsequent marriage
- their father was domiciled in the England and Wales

However, this can only be applied if it can be determined that one or both of the customer's parents had reasonable belief their marriage is valid, under English law and the father was domiciled in England and Wales at the time of:

- conception
- the medical treatment to conceive the child
- the marriage or civil partnership if it takes place between conception and birth (whilst the mother is pregnant)

The courts have stated that at least one of the parents must have a reasonable belief that their marriage was valid in English law. It is not enough if, for example, one of the parents believed it to be valid in Bangladeshi law.

It may be appropriate to assume reasonable belief in other cases, for example, if a woman was married in a country whose law permits polygamy. If the customer's parent's claim they did not know marriage was invalid, you must consider the evidence on a balance of probability.

If the customer was born after 4 April 1988, you must assume their parents reasonably believed that the marriage was valid. Unless there is evidence to confirm they did not. This is confirmed under section 28 of the Family Law Reform Act 1987.

If there is evidence to confirm the parents have been told that we could not regard the marriage as valid before the conception of the customer took place, the customer cannot benefit from the provisions of the Legitimacy Act. This can be found through system records such as siblings applications.

Legitimacy: void marriages in Scotland

The common law of Scotland confirms a customer born to parents, in a void marriage, is legitimate, if at least one of the parents reasonably believed the marriage to be valid.

Legitimacy: void marriages in Northern Ireland

In Northern Ireland, under section 19 of the Legitimacy Act (Northern Ireland) 1928, amended on 1 September 1961 by section 1 of the Legitimacy Act (Northern Ireland) 1961. Even if one of the customer's parents was not free to marry until after their birth, a customer is legitimised when their parents subsequently marry.

Case noting when the marriage is void

If you tell a customer's parents their marriage is invalid and the customer has no automatic claim to a British passport, you must add a case note.

If a marriage is treated as valid and a customer has an automatic claim to a British passport because they are legitimate under the 1976 Act, you must add a case note to confirm they are entitled to a British passport by virtue of section 1 of the Legitimacy Act 1976.

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Domicile: what it is and how to confirm a person's place of domicile

This section tells HM Passport Office staff, what domicile means, the impact a person's domicile has on an application and how to assess where someone is domiciled.

In some cases, HM Passport Office must establish where a customer's father is domiciled at the time of an event (for example, a customer's birth or their parent's marriage). We do this to confirm the customer, born before 1 July 2006, is their father's legitimate child for nationality purposes and have an automatic claim to a British passport.

Before confirming where a customer's father is domiciled, you the examiner, must look to see if there is a difference in law between the possible countries of domicile. If the laws are similar or the same there is no benefit in determining which it is.

Domicile is a legal term used to confirm the territory (area) whose customs, laws and rights apply to a particular person.

A person's place of domicile is not just about where they reside (live) or are settled. It is where they:

- feel is home
- consider to be their closest (permanent) home
- have a substantial connection with and the closest ties

A person can change their place of domicile throughout their life, sometimes more than once. However, they can only have one place of domicile at a time and cannot be without one. These two types of domicile are called, a:

- domicile of origin – this is a person's first place of domicile, usually the place they are born but could be their father's place of domicile (whilst they are still a dependant)
- domicile of choice – this is usually when a person moves from one country to another

Definition of domicile in the UK

A person cannot be domiciled in the UK, but in one of the individual nations that make up the UK:

- England and Wales
- Scotland

- Northern Ireland

For the purpose of this guidance, the UK means any of these places and includes the Crown dependencies of the:

- Bailiwick of Jersey
- Bailiwick of Guernsey
- Isle of Man

Domicile of origin

Every person, at birth, automatically has a domicile of origin. Usually this matches their fathers place of domicile at the time of their birth.

For example, if a customer is born in UK, and their father place of domicile is Bangladesh, will have a domicile at birth of Bangladesh. This may change to a domicile of choice (the UK), if:

- their father acquires that domicile of choice while the customer is under 16
- the customer, when they become an adult, shows they have ended their link to the domicile of origin, for example, if they do not maintain close links with Bangladesh because they have never lived there and only visit occasionally

It is difficult to lose a domicile of origin. Even if a person moves to a different country, it is unlikely that a place of domicile will change. However, they can get a:

- different domicile as a dependant ([Domicile and Matrimonial Proceeding Act 1973](#) legislation confirms a dependent is a child under 16 years old)
- domicile of choice in their own right

A person will return to their domicile of origin if they leave their domicile of choice and do not get another domicile of choice.

Place of domicile as a dependent: customer matches parents

If a person was born before 1 January 1974, their place of domicile changed automatically to match their:

- father, if their parents were married
- mother, if their parents were not married

If a person was born on or after 1 January 1974 (after the introduction of the [Domicile and Matrimonial Proceeding Act 1973](#)), their place of domicile changed automatically to match their father, if their parents were married (until the customer is 16 or gets married under the age of 16). However, a customer's domicile will match their mother if:

- their parents were married and:
 - are alive but living apart and the customer has a home (lives permanently) with their mother and not their father
 - their mother is dead, but when she died the customer had the same domicile as her because they had a home with her and has not since had a home with their father
- their parents were not married (until the customer is 16, or marries under the age of 16)

Domicile of choice

If a person loses domicile of origin, it is called their domicile of choice. To get a domicile of choice, the person must:

- reside in one country (the place)
- have a clear and fixed intention of making their permanent home or indefinite residence in that one country

The UK courts confirm, a person is not able to get a domicile of choice by illegal residence.

If a person leaves their domicile of choice, by abandoning their permanent home or indefinite residence there, they go back to the domicile of origin and keep this until they get another domicile of choice.

Confirming a father's place of domicile

To confirm a customer is their father's legitimate child and has an automatic claim to British nationality, you, the examiner, must consider all the evidence provided to establish their father's place of domicile and see if their father:

- has formed a genuine intention of remaining in that country permanently
- is he consistent in:
 - any declarations of intention to remain permanently or retire in place
 - their actions
 - other factors

It is important to remember, it is the customer's father's intentions which are relevant, when deciding on their place of domicile at a point in time. For example, on the day of an actual or potentially polygamous marriage. However, every event in their life must be looked at as it can be relevant.

This means, even if the customer's father tells us they want to retire and spend the rest of their days in one country. It does not confirm that was their intention at the time he got married.

For example, if it can be confirmed a person has retained their domicile of origin (for example, Jamaica), if they hold a British passport and own a house in the UK but also owns property and travels to see family members in Jamaica. This is because they have maintained firm ties with Jamaica being their country of origin even though they have built a life in the UK and established deep roots.

If you do not have enough evidence or a customer's father's country of domicile is not clear (for example, their father is born in one country and holds a passport of a different nationality), you can ask for a domicile questionnaire to be completed.

Factors to consider a person's place of domicile

This list is an example of factors to consider when confirming a persons' place of domicile. These factors can be confirmed by looking at the documents provided, supporting the application, and the answers to the domicile questionnaire.

It is not a complete list, and other factors must be considered. You must think, does the person make clear:

- their nationality, a person's nationality and place of domicile are different things
 - a person's place of domicile can change without a change of nationality. If a person gets a new nationality, it can be a relevant but not a factor depending upon the reasons for the change
 - it is an important factor if the person gives up (renounces) a former nationality
- where they were born and brought up
- where their parents were born
- where they:
 - have bank accounts
 - are registered to vote
 - intend to be buried, purchasing burial grounds can indicate an intention
- where their spouse and family live
 - if the person has a family in the country of origin and lived in a different country to them for many years, it will be more difficult to establish that the person has abandoned the domicile of origin
 - are there plans to bring over other family members to where they live
- where their children go to or plan to go to school, for example, if they are sent to the country of origin to be educated this can indicate the domicile of origin has not been abandoned
- where they currently live
- where they intend to live or retire, does the person have:
 - a clear and fixed intention of making their permanent home or indefinite residence in one country
 - their own property, a house or land in a particular place
- that they make:
 - few or no visits to their country of origin, this can support them in acquiring a domicile of choice

- frequent long visits to their country of origin, this can suggest that a person has retained their domicile of origin
- their length of residence in one particular place. Has the person:
 - clear intentions to live permanently in that country
 - lived in a particular country for a long time for employment purposes, but has no intention of remaining there permanently
 - the intention of establishing their family there and ending their days in that country (unless and until something happens to make them change their mind)

The person can also provide a statutory declaration to confirm:

- they have naturalised as a British national and intend to retire or reside permanently in the UK
- their intention to remain permanently or to retire in a place

However, you must look at why the statutory declaration was made and is it consistent with the person's actions

Domicile questionnaire

If a customer's father's place of domicile is not clear from the information available, he must be sent a domicile questionnaire to complete.

A domicile questionnaire can help confirm where the customer's father is domiciled at the time:

- he married the customer's mother
- of the customer's birth

There are three versions of the Domicile questionnaire, you must send the one that applies to the application:

- unmarried father questionnaire, for the customer's father who is not married to the mother
- monogamous marriage questionnaire, for parents who subsequently marry
- polygamous marriage questionnaire, for parents in a polygamous marriage

Domicile questionnaires do not need to be referred to the Guidance and Quality team for a decision to be made. Unless you have further enquiries about the application and must complete the guidance referral process.

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