

CHAPTER 1
SECTION 1

RIGHT OF ABODE

GUIDANCE - GENERAL

1. LEGISLATION AND GENERAL PROVISIONS

Section 1(1) of the Immigration Act 1971 confers complete exemption from control on persons with the right of abode, subject to proof of that right.

With very few exceptions, citizens of the United Kingdom and Colonies (CUKCs) who had right of abode on 31 December 1982 became British citizens under the British Nationality Act 1981.

Section 2 of the 1971 Act, as amended by section 29(2) of the British Nationality Act 1981, defines the categories of people who currently have the right of abode.

Section 2 of the Immigration Act 1988 places restrictions on the exercise of the right of abode in some cases.

2. PERSONS ENTITLED TO THE RIGHT OF ABODE

2.1 Who qualified before January 1983?

a) As originally enacted, the 1971 Act conferred right of abode on the following groups:

- CUKCs who had their citizenship by birth, adoption, naturalisation or registration in the United Kingdom (**section 2(1)(a)**)
- CUKCs born to or adopted by a parent who, at the time of the person's birth, had right of abode under section 2(1)(a) of the 1971 Act (**section 2(1)(b)(i)**)
- CUKCs born to or adopted by a parent who, at the time of the person's birth, had right of abode under section 2(1)(b)(i) of the 1971 Act (**section 2(1)(b)(ii)**)
- CUKCs who were ordinarily resident in the UK for any continuous period of 5 years before 31 December 1982 (time spent subject to immigration conditions can be included but the conditions must have been removed before completion of the 5 years) (**section 2(1)(c)**)
- Commonwealth citizens with a parent who, at the time of the person's birth or adoption, was a CUKC by birth in the United Kingdom (**section 2(1)(d)**)

- Female Commonwealth citizens and CUKCs who were, or had been, married to a man with right of abode at any time before 31 December 1982 (**section 2(2)**) (see also paragraph 3 below)

b) Definitions

- "**CUKC**", in relation to a time before 1 January 1949, means a British citizen (so, if the claimant was then a British subject, residence in the UK before 1.1.49 will count for the purposes of section 2(1)(c))
- "**Registration**" does not include registration under section 6(2) of the British Nationality Act 1948 by virtue of a marriage which took place on or after 28 October 1971 (though a woman who was so registered may have had the right of abode under section 2(2))
- "**Registration in the United Kingdom**" includes registration in an independent Commonwealth country (including South Africa before 31 January 1975 and Pakistan before 1 September 1973) by the British High Commission, except in the case of children registered under section 7 of the British Nationality Act 1948 on or after 28 October 1971 (though such children may have had the right of abode under section 2(1)(b)(i) or (ii))
- "**United Kingdom**" means England, Scotland, Wales, Northern Ireland, the Channel Islands and the Isle of Man. It also includes what is now the Republic of Ireland at a time when it formed part of the United Kingdom (i.e. before 31 March 1922)
- "**Parent**" includes the mother, but not the father, of an illegitimate child. It also includes the adoptive parents of a legally adopted child (see below)
- "**Adopted**" means legally adopted, i.e. adopted by order of a United Kingdom court or in any country listed on the relevant date in the Schedule to the Adoption (Designation of Overseas Adoptions) Order 1973
- "**Commonwealth citizen**" means a CUKC or a citizen of a country which, at the relevant date, was listed in section 1(3) of the British Nationality Act 1948.

2.2 Who has right of abode after 1 January 1983?

Section 2 of the Immigration Act 1971, as amended by section 39(2) of the British Nationality Act 1981, now provides that right of abode is held by the following groups:

- All British citizens (**section 2(1)(a)**)
- All other Commonwealth citizens who had right of abode under the original section 2(1)(d) or section 2(2) of the 1971 Act on 31 December 1982, and have not ceased to be Commonwealth citizens at any time since then (**section 2(1)(b)**)

b) Definitions

- "**British citizen**" means a person who acquired that citizenship under the

British Nationality Act 1981, the British Nationality (Falkland Islands) Act 1983, the British Nationality (Hong Kong) Act 1990, the Hong Kong (War Wives and Widows) Act 1996, the British Nationality (Hong Kong) Act 1997 or the British Overseas Territories Act 2002. Advice about whether such acquisition has occurred in any particular case may be obtained from Nationality General Enquiries, Liverpool.

- “Commonwealth citizen” means a person who is a British citizen, a British overseas territories citizen, a British National (Overseas), a British subject, a British Overseas citizen or a citizen of any country which, on the relevant date(s), is mentioned in Schedule 3 to the British Nationality Act 1981.

One result of the wording of the new right of abode provisions is that the re-admission of Pakistan and South Africa to the Commonwealth in 1973 and 1994 respectively did not have the effect of reviving any claims by their nationals to right of abode in the UK. It also means that the only way to acquire the right of abode since 1 January 1983 has been by becoming a British citizen.

2.3 What is/was the effect of renunciation of British citizenship or CUKC status in right of abode terms?

- a) CUKCs who renounced that status in order to retain or acquire citizenship of another Commonwealth country may have had right of abode on 31 December 1982 under section 2(1)(d) or section 2(2) of the 1971 Act as then in force. Provided they have since remained a Commonwealth citizen, that right will have been preserved by the new **section 2(1)(b)** (see 2.1 above).
- b) British citizens who renounced that status immediately forfeit their right of abode unless, as a citizen of another Commonwealth country, they have a residual claim under **section 2(1)(b)** of the 1971 Act, as amended.

3. EVIDENCE OF RIGHT OF ABODE

Under section 3(9) of the 1971 Act, as amended by the British Nationality Act 1981 and subsequently by the Immigration Act 1988 and the Immigration, Asylum and Nationality Act 2006, a person claiming right of abode in the United Kingdom should prove it by presenting either:

- a United Kingdom passport describing the person as a CUKC having the right of abode in the UK (but such a passport will *not* be sufficient evidence of right of abode after 15 June 2006); or
- a United Kingdom passport or an ID Card issued under the Identity Cards Act 2006 describing the person as a British citizen; or
- a United Kingdom passport or an ID Card issued under the Identity Cards Act 2006 describing the person as a British subject with the right of abode in the United Kingdom; or
- a certificate of entitlement

- b) This superseded earlier legislation, which provided for the production of alternative documentation in some cases. Under section 39(8) of the British Nationality Act 1981, a certificate of patriality issued under the 1971 Act and in force before 1 January 1983 is regarded as a certificate of entitlement unless, on that date, the holder ceased to have the right of abode. The certificate of confirmation of right of abode, a non-statutory document no longer in use, was issued for a brief period before commencement of the Immigration Act 1988 to dual nationals whose British citizenship gave them a claim to right of abode but who had opted to travel on non-British passports.

3.1. Certificates of patriality issued in Bangladesh

Some certificates of patriality issued in Bangladesh have been found to have been issued without proper examination. Caseworkers should be cautious about accepting such a certificate where a citizenship application depends on it.

4. UNCERTAIN CASES

Any cases in which there are doubts whether a person had the right of abode in the United Kingdom on a particular date should be referred to Nationality Group Right of Abode Section.

5. CERTIFICATES OF ENTITLEMENT ISSUED IN ERROR

The right of abode is a statutory right which a person either has or does not have, depending on whether the statutory conditions have been satisfied and subject to possible exercise of powers to deprive in s.2A of the 1971 Act (see paragraph 7 below). If a person does not satisfy those conditions, no action by or on behalf of the Secretary of State can operate so as to confer that right (Christodoulido -v- SSHD [1985] Imm AR 179).

The Immigration Appeal Tribunal held in SSHD -v-Gold [1985] Imm AR 66 that there is no right of appeal against the cancellation of a certificate of entitlement found to have been issued in error.

It may be possible in such a case to treat the misconceived certificate of entitlement as an application for citizenship. Further advice about this may be sought from the Nationality Policy and Special Cases Unit, Liverpool.

RESTRICTION ON EXERCISE OF RIGHT OF ABODE IN SOME CASES

Section 2 of the 1988 Act provides that a woman who acquired the right of abode through marriage before 1983 (i.e. by virtue of section 2(2) of the Immigration Act 1971, as then in force) may not enter the UK in exercise of that right, or be granted a certificate of entitlement, if either:

- another living wife or widow of the same man is or has at any time since *her* marriage been in the UK otherwise than as a visitor, an illegal entrant or on temporary admission, or

- another living wife or widow of the same man has been granted a certificate of entitlement or entry clearance on account of her marriage

The restrictions do not prevent a wife who entered the UK in that capacity *before* 1 August 1988 from returning to this country, or from being issued with a certificate of entitlement or entry clearance enabling her to do so, irrespective of the presence here of other wives. Nor do they apply to a wife who has been in the UK at any time since her marriage if she was then the *only* wife to have entered, or been cleared for entry to, the UK.

So long as a woman is prevented under section 2 from entering the UK or obtaining a certificate of entitlement, she is subject to the provisions of the 1971 Act in the same way as a person who does not have the right of abode in the United Kingdom (**section 2(3)**).

7. DEPRIVATION OF RIGHT OF ABODE

Under **s.2A** of the **Immigration Act 1971**, as inserted by **s.57** of the **Immigration, Asylum and Nationality Act 2006**, a person who has right of abode on the basis of Commonwealth (but not British) citizenship (i.e. under **s.11(b)** of the **1971 Act** as amended – may be deprived of that right “if the Secretary of State thinks it would be conducive to the public good for the person to be excluded or removed from the United Kingdom”.

Ministers suggested during the passage of the **2006 Act** that such action may be appropriate where the person –

- has encouraged or assisted others to commit acts of terrorism;
- has committed crimes, public order offences or other serious crime; or
- has carried out acts seriously prejudicial to vital national interests, including espionage and acts of terrorism directed at the United Kingdom or an allied power

A person against whom a deprivation order is made will have a right of appeal to the Asylum and Immigration Appeal Tribunal or, where sensitive information might otherwise be disclosed in the course of the appeal, to the Special Immigration Appeal Tribunal. Subject to the outcome of any such appeal, an order made under **s.2A** of the **1971 Act** remains in force until revoked by the Secretary of State.

Cases in which there may be a possibility of deprivation of right of abode should be referred to Nationality Policy and Special Cases Unit.