

CHAPTER 1
SECTION 1

RIGHT OF ABODE

ESTABLISHING NATIONALITY STATUS AND REFERRAL TO NATIONALITY GENERAL ENQUIRIES OR NATIONALITY POLICY AND SPECIAL CASES UNIT, LIVERPOOL

1. INTRODUCTION

In some cases an applicant's nationality status may need to be established (if necessary by referral to Nationality General Enquiries, Liverpool) where, for example, it is relevant to his claim to exemption from control through the right of abode. This annex covers some of the situations which may arise and provides guidance concerning the referral to Nationality General Enquiries on any such cases. Information is also provided about the various "nationality" explanatory leaflets which are held in Nationality General Enquiries.

2. DUAL NATIONALS

A foreign national cannot have the right of abode **unless** he is a dual national and qualifies either as a British or other Commonwealth citizen. A person whose father or mother was a British citizen at the time of the applicant's birth may well be a British citizen by descent, even if he is travelling on a foreign passport. Similarly, a person born in the United Kingdom but now holding a foreign (or Commonwealth) passport may be a British citizen.

A person who was granted conditional leave to enter as a foreign national may later seek to establish a claim to British or other Commonwealth citizenship which would qualify him for the right of abode. If successful, such a person may be issued by Nationality, Right of Abode Section with a certificate of entitlement.

Caseworkers should be aware that some applicants may experience difficulties with their passports if they have certificates of entitlement in their passports. If such a situation comes to notice the applicant should be advised that this may occur but that no alternative endorsement may be offered.

3. FORMER BRITISH COLONIES

When former British colonies gained independence, citizens of the new countries normally lost their citizenship of the United Kingdom and Colonies on independence unless they had a specific exception to loss. Such persons would now have **no claim** to British citizenship, British overseas territories citizenship or British Overseas citizenship under the British Nationality Act 1981.

Occasionally, caseworkers may encounter a person claiming the right of abode who submits his old pre-independence passport as "proof" of citizenship. When dealing

with such a case, it should be borne in mind that a person could have had the right of abode under section 2(1)(a), (b) or (c) Immigration Act 1971 immediately prior to 1 January 1983 **only** if he was **then** a citizen of the United Kingdom and Colonies and it may therefore be necessary, in some cases, to check with Nationality General Enquiries to ascertain the person's national status.

It should also be noted that a married woman who lost her citizenship of the United Kingdom and Colonies on independence may **still** have had a claim to the right of abode under section 2(2) Immigration Act 1971 if, as a Commonwealth citizen, she has at any time been married to a person who, at that time, had the right of abode.

This applies to all the former colonies which became independent before 1 January 1983 **except** Antigua and Belize which gained independence on 21 November 1981 and 21 September 1981 respectively. When Antigua and Belize became independent, in addition to the normal categories of person who retained citizenship of the United Kingdom and Colonies prior to 1 January 1983, provision was made for any person who **would have become** a citizen of either country to retain citizenship of the United Kingdom and Colonies if, immediately before independence that person had the right of abode in the United Kingdom. Such people will have become British citizens. Separate arrangements have applied to St Christopher and Nevis (which became independent on 19 September 1983) and Hong Kong (which ceased to be a dependent territory on 1 July 1997). Any claims arising from a connection with either of these former territories should be referred to the Nationality Policy and Special Cases Unit (NPSCU), Liverpool.

ANNEX D (below) provides lists of former and existing British dependencies.

4. RENUNCIATION OF CITIZENSHIP OF THE UNITED KINGDOM AND COLONIES OR BRITISH CITIZENSHIP

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 **s.2(1)(d)** or **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 **s.2(1)(a)** (see 2.1.1 above).

British citizens who renounce that status immediately forfeit their right of abode unless they acquire citizenship of another Commonwealth country, they have a residual claim under **s.2(1)(b) IA 1971** as amended.

It is open to a person who has renounced citizenship of the United Kingdom and Colonies or British citizenship to apply for resumption of British citizenship under section 10 or 13 respectively of the British Nationality Act 1981. A person who has resumed British citizenship would qualify **from the date of resumption** for the right of abode.

Caseworkers should seek the advice of Nationality General Enquiries if the nationality status of a person who has applied for the right of abode following claimed resumption of British citizenship is in doubt.

5. REFERRAL OF CASES/CORRESPONDENCE TO NATIONALITY GENERAL ENQUIRIES

Correspondence may raise matters relating to British nationality. Officers dealing with such cases should ensure that the papers are referred as soon as possible to Nationality General Enquiries as soon as appropriate (but after all outstanding immigration matters have been cleared). This should be done not only where a query is raised by the correspondence but also where a passing reference to British nationality is made which might have a bearing on the case at a later date - for instance an indication that the correspondent intends in due course to apply for registration or naturalisation. It may be desirable in such cases to give the writer guidance which may remove a misconception or save trouble at a later stage.

5.1. Cases involving nationality enquiries which may not need to be referred to Nationality General Enquiries

Where a person is having the time limit on his stay removed (or already had the time limit removed) and has enquired about registration or naturalisation, officers may contact Nationality General Enquiries for advice and, if necessary, a contribution. It may be sufficient to send one of the leaflets described in paragraph 5.2 below (which are available from Nationality General Enquiries or on the IND website).

NB. Caseworkers should not send a leaflet or provide advice about a person's eligibility for registration or naturalisation without first consulting Nationality General Enquiries since it may be necessary to obtain a suitable contribution to the reply.

All other nationality enquiries should be referred to Nationality General Enquiries.

5.2. Leaflets

The following leaflets outline the law relating to registration and naturalisation as a British citizen.

Leaflet BN1 is the main leaflet explaining the effects of the British Nationality Act 1981

Leaflet BN4 explains transmission of British citizenship by descent and the registration provisions for children of British citizens born abroad

* Leaflet BN7 explains how a foreign national or a Commonwealth citizen (including the spouse of a British citizen) may be naturalised as a British citizen

* Leaflet BN9 explains the position of children born in the United Kingdom after 1 January 1983

* Leaflet BN11 explains how children under eighteen years of age may be registered as British citizens

- * Leaflet BN12 explains how British overseas territories citizens, British Overseas citizens, British subjects (under the 1981 Act), British Nationals (Overseas) and British protected persons may be registered as British citizens
- * Leaflet BN13 explains how certain adult children of British mothers may be registered as British citizens

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