



Home Office

# Nationality policy: children of unmarried parents

Version 3.0

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# About this guidance

This guidance tells nationality caseworkers about how to consider a child's relationship with their father, if the parents were not married, when assessing whether someone has an automatic claim to citizenship.

## 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.

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 Rules and Forms team.

## Publication

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

- version **3.0**
- published for Home Office staff on **13 March 2019**

## Changes from last version of this guidance

Amendment to clarify that DNA evidence cannot be mandated and that no negative inference can be drawn if an applicant chooses not to supply such evidence.

### Related content

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# Introduction

This guidance tells you about the law on legitimacy for the purposes of British nationality law. You may need to look at a person's relationship in order to decide whether a person has a claim to British nationality.

In some cases, you will need to consider where the father was domiciled at the time of the birth, as the laws of that country may apply.

## **Related content**

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# Children of unmarried fathers

This section tells you who a child's father is in UK nationality law.

[Section 50\(9\) of the British Nationality Act 1981](#) defines who is a child's 'father' for nationality purposes.

The law changed on 1 July 2006. Before that date:

- citizenship could only be passed on from a British man to his child if the parents were married
- a child born in the UK could not acquire British citizenship on the basis of a settled father if the parents were not married

For children born after 1 July 2006 citizenship can be acquired through a British or settled man, whether or not he was married to the child's mother.

## Children born on or after 1 July 2006

For a child born on or after 1 July 2006. The following can meet the definition of father for British nationality purposes:

- the mother's husband, if any, at the time of the child's birth
- any person who is treated as the father under section 28 of the Human Fertilisation and Embryology Act 1990 or section 35 or 36 of the Human Fertilisation and Embryology Act 2008
- a person who is treated as a parent of the child under [section 42](#) or [section 43](#) of the Human Fertilisation and Embryology Act 2008 (second female parent)
- if none of the above applies, a man who can be proved to be the father by the production of either:
  - a birth certificate identifying him as such, issued within 12 months of the birth of the child (where the birth was registered before 10 September 2015)
  - other evidence, such as a DNA test report, court order or birth certificate that demonstrates paternity

This means that:

- a child can acquire citizenship through an unmarried father, if satisfactory evidence of paternity can be provided
- the mother's husband is the father for nationality purposes, even if it is established that he is not biologically related to the child

You must not mandate DNA evidence as this is not a requirement. Applicants can choose to volunteer DNA evidence, either proactively or in response to an invitation to submit further evidence. Where applicants choose not to volunteer DNA evidence, no negative inferences can be drawn from this. See DNA policy guidance for full instructions on the use and consideration of DNA evidence to prove a biological relationship.

## Children born before 1 July 2006

For children born before 1 July 2006, you may need to consider whether a child was 'legitimate'. Legitimacy depends on where the father was domiciled at the time of the child's birth. If the laws of the country where the father is domiciled recognise the child as legitimate, then the child will be regarded as legitimate for the purposes of the British nationality law.

This means that the following can be regarded as 'legitimate':

- a child whose parents were married at the time of the birth
- a child whose parents were not married at the time of the birth, but married at a later date – if that meant that the child was treated as having been legitimated by the marriage, according to the laws of the place where the father was domiciled
- a child who was treated as legitimate by the laws of the country where the father was domiciled at the time of the birth, irrespective of whether the parents were married or not

## Child born during a marriage

A child born to a married woman before 1 July 2006 may be presumed to be legitimate unless the balance of evidence shows that the mother's husband is probably not the father (for example where the parents' marriage is annulled on the grounds of non-consummation, or evidence suggests that someone else is the father). This means that you do not need to accept the claim.

## Children born to unmarried British women before 1949

The [British Nationality Act 1948](#) made no provision for the transmission of citizenship of the UK and Colonies (CUKC) in the female line. This meant that children born to unmarried mothers before 1 January 1983 could be stateless. However, the [British Nationality Act \(No 2\) 1964](#) provided that a stateless person would be entitled to registration as a CUKC if born to a CUKC mother.

## Legitimacy and void marriages

In some cases the child of a void marriage can be treated as legitimate by virtue of the [Legitimacy Act 1976](#).

[Section 1 of that Act](#) provides that the child of a void marriage should be treated as the legitimate child of the parents, if either, or both, of the parents reasonably believed themselves to be validly married in English law and the father was domiciled in England and Wales at the time of either:

- the insemination resulting in the birth
- where there was no such insemination, the child's conception
- the celebration of the marriage, if the marriage takes place between conception and birth

This applies even where the belief that the marriage was valid was due to a mistake as to law.

This provision does not benefit children born to a couple before a void marriage is contracted.

This particularly applies where the child's parents were in a polygamous marriage, and the second marriage has been deemed to be invalid because the father was domiciled in the UK.

If the marriage is void, you must determine whether the parents reasonably believed it to be valid. In the case of a child born after section 28 of [the Family Law Reform Act 1987](#) came into effect on 4 April 1988, you must assume that the parents reasonably believed that the marriage was valid unless there is evidence to the contrary. It may be appropriate to assume reasonable belief in other cases (for example on the part of a woman married in a country whose law permits polygamy).

The courts have held that a reasonable belief that the marriage was valid in English law was required. It was not sufficient that, for example, one of the parents believed it to be valid in Bangladeshi law.

If the couple had been told that we could not regard the marriage as valid before the conception of the child took place, the child cannot benefit from the provisions of the Legitimacy Act.

If you advise a couple that their marriage is invalid, you must therefore note that information in Home Office records, so that we have evidence that they are aware that their marriage is regarded as void if they have any future children.

If you recognise a claim for a child who is treated as legitimate under the [1976 Act](#), you must explain this using the following wording:

'Nationality is a matter of law that can be determined conclusively only by the courts.

On the basis of the information and documentary evidence that you have provided, the Secretary of State is prepared to regard you as a British citizen under section 2(1) of the British Nationality Act 1981, by virtue of section 1 of the Legitimacy Act 1976.'

## Legitimation

'Legitimation' is where a child's parents marry after the birth, and the marriage 'legitimises' the birth under the law of the country where the father is domiciled.

Under [section 47\(1\) of the British Nationality Act 1981](#), a child born before 1 July 2006 will be treated as having been legitimated by the subsequent marriage of their parents if the marriage legitimated the child under the law of the place where the father was domiciled at the time of the marriage.

[Section 23 of the British Nationality Act 1948](#) had the same effect for children born before 1 January 1983. The person is treated as having been born 'legitimate' from the date of the parents' marriage or 1 January 1949, whichever was the later.

The law on legitimation changed on 29 October 1959. Before that date the child could only be legitimated if the parents had been free to marry at the time of the birth. After that date, there was no requirement for the parents to have been free to marry at the time of the child's birth.

The legislation before 29 October 1959 included the words 'if living'. This means that a person who was not alive on 29 October 1959 cannot be legitimated. Where the marriage of the parents took place after 29 October 1959, the person concerned could only be legitimated if they were alive at the date of the marriage.

Further amendments to legitimacy law were made by the [Family Law Reform Act 1987](#), to take account of developments in human embryology.

### Legitimacy law in Scotland

It has always been part of the common law of Scotland that a child of a void marriage may be regarded as legitimate if at least one of the parents reasonably believed the marriage to be valid. On 8 June 1968, the Legitimation (Scotland) Act 1968 came into force and aligned Scottish law on legitimation to English law. Section 4 of the 1968 Act removed the requirement for the parents to be free to marry at the time of the child's conception.

### Legitimacy law in Northern Ireland

Northern Ireland law regarding legitimation is contained in section 19 of the Legitimacy Act (Northern Ireland) 1928, as amended on 1 September 1961 by [section 1 of the Legitimacy Act \(Northern Ireland\) 1961](#). Under this law, the subsequent marriage of the parents operates to legitimate the person even where one of the parents was not free to marry until after the person's birth.

### Legitimacy law in other countries

Many countries do not distinguish between children of married and unmarried parents. This includes Jamaica (from 1 November 1976) and New Zealand (from 1 January 1970).

A child born before 1 July 2006 to a man who is domiciled in one of those countries can acquire British citizenship through their father if the laws of that country recognise the child as legitimate.

Information on the legitimacy laws of other countries can be found in [HMPO guidance on legitimacy](#).

Where a child is treated as 'legitimate' in law, because a country does not distinguish between married and unmarried parents, the fact that a child's parents marry will not make a difference to their status.



## Examples

In New Zealand the law changed on 1 January 1970 when the Status of Children Act 1970 abolished the concept of 'illegitimacy' and 'legitimacy'.

### Example 1

A child born before 1 January 1970 whose parents married before that date would be 'legitimated' by the parents' marriage. This means that the child could have a claim to British citizenship by descent through the father from the date of the marriage.

### Example 2

A child born to unmarried parents in New Zealand after 1 January 1970 will be regarded as 'legitimate', and so could have a claim to British citizenship by descent through the father, if both parents were domiciled in New Zealand at the time of the child's birth.

### Example 3

A child born to unmarried parents in New Zealand before 1 January 1970 would be 'legitimated' by the New Zealand Status of Children Act 1970. They would not have a claim to British citizenship because they were 'legitimated' by the law - and not by the marriage of their parents.

### Example 4

A child born to unmarried parents in New Zealand before 1 January 1970, whose parents later married, will not have a claim to British citizenship. This is because it was the law, and not their parents' marriage which 'legitimated' them.

There is no equivalent to [section 47 of the British Nationality Act 1981](#) in [The Immigration Act 1971](#). This means that a child would be recognised as having the right of abode under s.2(1)(d) through the father if they were regarded as having been 'legitimated' by the New Zealand 1970 law.

## Evidence that a child born abroad has been legitimated

To establish a claim a person will need to provide evidence that the mother's husband is the father of the child. This might be statutory declarations made by each parent or, if the parents are dead, by someone who knows the circumstances of the child's birth, DNA test results or other evidence of paternity.

You must not mandate DNA evidence as this is not a requirement. Applicants can choose to volunteer DNA evidence, either proactively or in response to an invitation to submit further evidence. Where applicants choose not to volunteer DNA evidence, no negative inferences can be drawn from this. See DNA policy guidance for full instructions on the use and consideration of DNA evidence to prove a biological relationship.

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### Related external links

[Registration as British citizen: children](#)