



Home Office

Nationality: right of abode

Version 5.0

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About this guidance

This guidance is for Home Office staff assessing applications where the applicant is claiming right of abode in the UK.

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 the 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 Rules 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 **27 November 2019**

Changes from last version of this guidance

Following fact checking of the ICIBI inspection report into ROA cases, a redacted section on page 14 has been re-instated to ensure transparency. Removal of the section on applications received before 6 April 2015.

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Right of abode: the law

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

With very few exceptions, citizens of the UK and Colonies (CUKCs) who had right of abode on 31 December 1982 became British citizens under the [British Nationality Act 1981](#) (BNA 1981). For further information, please see the Automatic acquisition- persons born before 1 January 1983 guidance (formerly chapter 2).

Section 2 of the 1971 act, as amended by section 39(2) of the BNA 1981, defines the categories of people who currently have the right of abode in the UK.

The right of abode is a statutory right which a person either has or does not have, depending on whether the conditions in section 2 of the 1971 act are satisfied and subject to possible exercise of the power to remove the right of abode in section 2A of the 1971 act (see Deprivation of right of abode). No action by or on behalf of a minister (including the issue of a passport or certificate of entitlement) can operate so as to confer the right of abode on any person who does not have it already by virtue of the 1971 act (*Christodoulido -v- SSHD* [1985] Imm AR 179). Where a certificate of entitlement has been granted in error and the applicant has now lost age-limited or time-limited entitlements to citizenship, caseworkers must be ready to 'construe' the application as an undetermined citizenship application, please see Information for applications for nationality.

General points

British subjects born prior to 1 January 1949 are Commonwealth citizens. Citizens of Eire, who claim to have remained a British subject, by completion of form E, are deemed to have retained British subject status throughout. These people are also Commonwealth citizens.

A person who had the right of abode through being a CUKC ceased to have that right if they lost their CUKC status, for example on the independence of a colony.

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 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).

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Qualification for right of abode

This section tells you who qualifies for right of abode in the UK.

The right of abode provisions changed on 1 January 1983.

Persons with right of abode before 1983

The following individuals had right of abode before 1983:

- a citizen of the UK and Colonies (CUKC) who was born, adopted, naturalised or registered in the UK – section 2(1)(a)
- a CUKC born to or adopted by a parent who at the time of the person's birth or adoption had right of abode under 2(1)(a) of the 1971 act - section 2(1)(b)(i)
- a CUKC born to or adopted by a parent who, at the time of the person's birth, had right of abode under 2(1)(b)(i) – section 2(1)(b)(ii)
- a CUKC who was 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)
- a Commonwealth citizen with a parent or adoptive parent who, at the time of birth or adoption, was a CUKC by birth in the UK – section 2(1)(d)
- a female Commonwealth citizen who is, or has been, married to a man with right of abode at any time before 31 December 1982 – section 2(2)
- a CUKC woman who is, or has been, married to a man with right of abode at any time before 31 December 1982 – section 2(2)

See section [Persons with right of abode on or after 1 January 1983](#).

To assess whether a CUKC had the right of abode on 31 December 1982 you can use the CUKC right of abode flowchart.

Definitions

This section gives definitions of the terms used in the Immigration Act 1971.

CUKC

'CUKC' (citizen of the UK and Colonies), in relation to a time before 1 January 1949, means a British subject (so, if the claimant was then a British subject, residence in the UK before 1 January 1949 will count for the purposes of section 2(1)(c)).

Registration

'Registration' does not include registration under section 6(2) of the [British Nationality Act \(BNA\) 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 UK

'Registration in the UK' includes registration in an independent Commonwealth country (including South Africa before 1 January 1966 and Pakistan before 1 September 1973) by the British High Commissioner. The exception to this is where a child was registered under section 7 of the BNA 1948 on or after 28 October 1971. (Such children may have had the right of abode under section 2(1)(b)(i) or (ii)).

Under the British nationality law 'UK' means England, Scotland, Wales, Northern Ireland, the Channel Islands and the Isle of Man. It also includes Ireland at a time when it formed part of the UK (before 31 March 1922).

Parent

'Parent' before 1 January 1983 included:

- the mother, but not the father, of an illegitimate child – however, such a child may have been legitimated by the subsequent marriage of his or her parents
- the adoptive parents of a legally adopted child

Adopted

'Adopted' means legally adopted (adopted by order of a UK court or in any country listed in the Schedule to the Adoption (Designation of Overseas Adoptions) Order 1973 or in the Adoption (Recognition of Overseas Adoptions) Order 2013 or the 2013 Scottish Regulations (see registering minors at discretion,).

Persons with right of abode on and after 1 January 1983

The [Immigration Act 1971](#) as amended by section 39(2) of the BNA 1981 now provides that the right of abode is held only by the following:

- section 2(1)(a): British citizens
- section 2(1)(b): 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 January 1982, and have not ceased to be Commonwealth citizens at any time since then – these are:
 - a Commonwealth citizen with a parent or adoptive parent who, at the time of the person's birth or adoption, was a citizen of the UK and Colonies by birth in the UK
 - a female Commonwealth citizen who is, or has been, married to a man with the right of abode at any time before 31 December 1982

One result of the wording of the amended right of abode provisions is that the re-admission of Pakistan and South Africa to the Commonwealth in 1989 and 1994

respectively did not have the effect of reviving any claims by their nationals to right of abode in the UK. A person who held an additional Commonwealth nationality may still have the right of abode, provided they have remained a Commonwealth citizen since 31 December 1982.

The Gambia was removed from the list of Commonwealth countries in schedule 3 of the British Nationality Act 1981 on 12 November 2015, and the Republic of Maldives on 12 May 2017. As such their nationals cannot have a right of abode in the UK, unless they also have British citizenship or another Commonwealth citizenship.

The only way to acquire right of abode since 1 January 1983 has been by becoming a British citizen.

British citizens who renounce that status immediately forfeit their right of abode unless they continue to qualify, by virtue of having Commonwealth citizenship, under section 2(1)(b) of the 1971 act (as amended).

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Proving the right of abode

Under section 3(9) of the Immigration Act 1971, as amended by the Immigration, Asylum and Nationality Act 2006, a person claiming right of abode in the UK must prove it by presenting either:

- a UK passport describing the person as a British citizen
- a UK passport describing the person as a British subject with the right of abode in the UK
- a certificate of entitlement

This superseded earlier legislation, which allowed the production of alternative documentation in some cases.

Entry into the UK

A passenger seeking to enter the UK and claiming to have the right of abode, but who is unable to produce any of the above documentary evidence, must be treated as subject to control. Such a person must be examined in order to decide whether or not they qualify for entry. For example, if they are claiming entry for settlement and the rules state that an entry clearance is required, then they must be refused. If a passenger does not hold the required evidence to prove they hold or are entitled to the right of abode, that is not, in itself, a ground for refusal of entry.

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Procedure for obtaining a certificate of entitlement

An application for a certificate of entitlement must be made on form ROA. Applications for certificates of entitlement received on and after 21 December 2006 must be determined in accordance with the Immigration (Certificate of Entitlement to the Right of Abode in the United Kingdom) Regulations 2006 (as amended by the Immigration (Certificate of Entitlement to Right of Abode in the United Kingdom) (Amendment) Regulations 2011).

The regulations state that:

- the application must be made:
 - to the Home Office, if the applicant is in the UK
 - to the Home Office or to the Lieutenant-Governor, if the applicant is in any of the Channel Islands or the Isle of Man
 - to the Governor, if the applicant is in a British Overseas Territory
 - to an entry clearance officer, if the applicant is elsewhere
- applications must be accompanied by the applicant's own valid passport or travel document, 2 photographs of the applicant taken no more than 6 months prior to the date of the application, and relevant supporting documentation as specified in the [schedule to the 2006 regulations](#).

Exercising discretion

In exceptional cases, you can proceed without all of the specified documentation, but this discretion must be used very rarely and only in cases where:

- the person clearly has a right of abode despite the lack of a particular document specified in the regulations
- you are satisfied that the lack of documents is not part of an attempt to acquire a certificate of entitlement by fraudulent means

Any case where it is proposed to exercise discretion to grant without receipt of a particular document must be referred to a senior caseworker (SCW). SCWs must refer to the Nationality Policy team for advice as required.

Issuing a certificate of entitlement

A certificate of entitlement is to be issued by means of being affixed to the applicant's passport or travel document. A passport will be suitable for this purpose only if:

- it relates to the applicant
- it has not been altered otherwise than by or with the permission of the authority who issued it
- it was not obtained by deception

Ineligibility for a certificate of entitlement

A person will be ineligible for a certificate of entitlement if they either:

- do not have the right of abode in the UK (see [Qualification for right of abode](#) section) or hold one of the following documents:
 - a current UK passport describing the person as a British citizen
 - a current UK passport describing the person as a British subject with the right of abode in the UK
 - a certificate of entitlement in another foreign passport
- are a person whose [right of abode is restricted under section 2 of the Immigration Act 1988](#) or is deprived of their right of abode by order under section 2A of the Immigration Act 1971 (see [Deprivation of right of abode](#))

Revocation of certificates of entitlement

A certificate of entitlement issued on or after 21 December 2006 may be revoked by any Home Office official (including an official in Her Majesty's Passport Office), any Border Force officer, any consular officer or any entry clearance officer where it is discovered that the holder is no longer eligible for it.

A certificate of entitlement (whether issued before or after 21 December 2006) will otherwise cease to have effect on the expiry of the passport or travel document that it is fixed in.

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How to process a right of abode application

This section tells you how to process an application for a certificate of entitlement to the right of abode.

Drawing up a family tree

Before you consider an application for a certificate of entitlement it may help to draw up a family tree. All relevant dates of independence and any exceptions to loss must also be taken in to account. These can be found in the Diplomatic Service Procedures (DSPs).

For female applicants married before 1 January 1983, you may also need to consider her husband's family tree as she may have a claim to right of abode through him.

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Granting a certificate of entitlement to the right of abode

This page tells you how to grant a certificate of entitlement to the right of abode.

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Once the required checks have been done and it has been confirmed that the applicant is entitled to right of abode and under what section of the [British Nationality Act 1981](#), a vignette can be issued by Secure Handling Area (SHA).

You must place all documents, checkprint, and the return envelope with Secure Mail Service (SMS) sticker in a purple plastic wallet. These must be collated for onward transmission to Secure Handling Area (SHA) in a blue plastic pouch. A list of all applications included must be placed in a blue bag and forwarded to the messengers.

The Messengers team will send the pouch on to the Vignettes team in the SHA for an electronic vignette to be issued.

For urgent cases the package must be clearly marked as 'urgent' and either you must put in the first bag to be sent to SHA that day, or you must hand-deliver the application to the Vignettes team for an electronic vignette to be issued

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Refusals

This page tells you about refusals of right of abode.

When an application is refused, if the application was received before 6 April 2015 the following letters/ documentation must be prepared:

- 2 x reason for refusal letters (RFRL) - send one copy to the applicant and keep the other on file (do not print a 'file copy')
- 2 x refusal notices - send one notice to the applicant and keep the other on file
- 1 x PF1 – this must remain on the file
- 1 x appeal booklet – this is to be sent to the applicant

Applications received on or after 6 April 2015 do not have a right of appeal and so only a refusal letter must be prepared.

All letters must be addressed to the applicant. If the applicant has an agent a covering letter should be completed. All letters must be despatched by Secure Mail Service (SMS) even if there are no enclosed documents.

Copies of supporting documentation submitted with the application or obtained in the course of consideration must be kept on file.

When refusing an application, you must consider whether the case should be referred to Immigration Enforcement, using the Case Information Database (CID).

You do not need to refer the case to Immigration Enforcement where:

- the customer holds a valid British citizen passport
- the customer holds valid leave to enter or remain, indefinite leave to enter or indefinite leave to remain
- the customer is a European national or has a right of residence under EU laws
- the entitlement has been established but a current passport has not been presented

You must refer the case to Immigration Enforcement where:

- there is no evidence of an entitlement to the right of abode and there is no evidence presented or held on Home Office systems to show that the applicant holds valid leave to remain, indefinite leave to enter or indefinite leave to remain
- there is evidence that fraudulent documents have been presented in support of the application

You must seek advice from a senior caseworker where:

- there is a potential entitlement but insufficient evidence has been provided
- the customer was born in the UK

- the customer has lived in the UK for more than 20 years

If it is agreed that it is more likely than not that an entitlement exists and so a referral is not required, your refusal letter must include the following paragraph:

Those who are entitled to right of abode in the UK and who do not hold a British citizen passport must prove this for work or immigration purposes by producing a certificate of entitlement. Those who cannot prove that they have the right to remain in the UK are unable to legally work or access public funds, and may be removed from the UK. You should therefore make a fresh application and provide (specify missing documents) as soon as possible. If you are unable to provide these, you should seek advice about your immigration status as a matter of urgency. Further information is available at <https://www.gov.uk/find-an-immigration-adviser>.

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Appeals: right of abode

This page tells you about appeals against right of abode decisions.

Whether a person has a right of appeal against the refusal of their right of abode application will depend on when the application was received.

Applications received on or after 6 April 2015 do not get a right of appeal. Any representations against refusal must be considered by a senior caseworker within the Home Office. Applicants can apply on form RROA setting out why they believe the decision was not in line with the law and our policy at that time. There is a fee payable for a reconsideration application. If, following reconsideration, the applicant is still not satisfied with the decision their only option is to challenge it by judicial review.

There is no right to appeal against the revocation of a certificate of entitlement.

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Restriction on exercise of right of abode in some cases

This section sets out the restrictions on exercising right of abode in some cases.

Section 2 of the [Special Immigration Appeals Commission Act 1988](#) provides that a woman who acquired the right of abode through marriage before 1983 (for example 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
- another living wife or widow of the same man has been granted a certificate of entitlement or entry clearance on account of her marriage

‘Another living wife’ does not include a divorcée.

The restrictions do not prevent a wife who entered the UK in that capacity before 1 August 1988 from:

- returning to the UK
- being issued with a certificate of entry clearance enabling her to do so

This applies even when there is another wife present in the UK. Restrictions do not 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.

A woman who is prevented under section 2 of the Special Immigrations Appeals Commission Act 1988 from entering the UK or obtaining a certificate of entitlement, will be 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 UK (section 2(3) of the Immigration Act 1971).

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Deprivation of right of abode

This section tells you about when a person can be deprived of their right of abode in the UK.

A person who has right of abode on the basis of Commonwealth (but not British) citizenship, 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. This is under section 2A of the [Immigration Act 1971](#), as inserted by section 57 of the [Immigration, Asylum and Nationality Act 2006](#),

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 war crimes, public order offences or other serious crime
- has carried out acts seriously prejudicial to vital national interests, including espionage and acts of terrorism directed at the UK 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 Appeals Commission. Subject to the outcome of any such appeal, an order made under section 2A of the 1971 act remains in force until revoked by the Secretary of State.

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