



Home Office

Nationality policy: domicile

Version 1.0

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About this guidance

This guidance tells Home Office staff about how to consider a person's domicile for the purpose of assessing citizenship claims and applications.

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 **1.0**
- published for Home Office staff on **14 July 2017**

Related content

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Domicile

'Domicile' is a legal term used for the territory whose laws apply to a particular person.

Nationality caseworkers might need to consider a person's domicile in the following cases:

- to assess whether a marriage is valid
- to assess whether a divorce is valid
- to see if a man can be treated as a child's father for nationality purposes

Domicile is not the same as residence, or being settled in the UK. It is generally the place that a person regards as their closest home and with which they have the closest ties. It is based on actual residence and an intention to remain permanently.

No one can be without a domicile, and a person can only have one domicile at a time.

A person can only have a domicile within a territory subject to a single system of law. For example, a person cannot be domiciled in the United Kingdom, but can be domiciled within England, Wales, Northern Ireland, or Scotland.

When assessing domicile you must take all the relevant evidence into account. A person's first domicile is their 'domicile of origin'. This might be the place they are born, but it could be in a country that the person has never been to, if they acquired it through their father.

A person can acquire a 'domicile of choice' by moving from one country to another.

Where a person is claiming that a change of domicile has taken place, it is up to that person to show that a change of domicile has taken place. The change has to be shown with a high degree of clarity.

Domicile of origin

At birth every person acquires a domicile of origin.

The domicile of a new-born child's depends on the domicile of their parent at the time of birth.

A person keeps their domicile of origin until either:

- a different domicile is acquired as a dependant
- they acquire a domicile of choice in their own right

When another domicile is acquired in either of these ways it displaces the domicile of origin. However, the domicile of origin will resume if the person abandons their domicile of choice and does not acquire another domicile of choice.

Domicile of children

Before 1 January 1974:

- a child's domicile changed automatically with that of their father if the parents were married
- a child's domicile changed automatically with that of their mother if their parents were not married

On or after 1 January 1974:

- a child's domicile changes automatically with that of their father, if the parents were married, until the child is 16, or gets married under the age of 16, unless:
 - the parents are alive but living apart, and either the child has a home with the mother and no home with the father or the child acquired a domicile through having a home with the mother, and has not since had a home with the father - in these cases the child's domicile is that of the mother
 - the mother is dead, but at her death the child had her domicile by virtue of having a home just with her, and has not since had a home with the father
- a child's domicile changes automatically with that of the mother, if the parents were not married, until the child is 16, or marries under the age of 16

Domicile of women

Before 1 January 1974, a woman acquired the domicile of her husband on marriage. So long as the marriage subsisted, her domicile changed with that of her husband and she could not acquire one in her own right.

Since 1 January 1974, a married woman can acquire a domicile in her own right.

Where a woman was married on 1 January 1974, she retained the domicile which she had immediately prior to that date unless until she acquired a change of domicile in her own right.

Domicile of choice

A person can acquire a domicile of choice instead of their domicile of origin. To do this they must both:

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

If a person has acquired a domicile of choice, they will revert automatically to their domicile of origin if they leave the place in question and have the intention of abandoning their permanent home or indefinite residence there. They will then retain the domicile of origin until they acquire another domicile of choice.

Establishing a domicile of choice

There are 2 main elements to the acquisition of a domicile of choice:

- residence
- intention

For immigration purposes the test is whether a person has made the alleged domicile of choice their home with 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 fact that a person has not resided in a country for a long time may not prevent them from acquiring a domicile of choice if they intend to make it their permanent home. For example, if a person clearly intends to live permanently in another country, they could acquire a domicile of choice on arriving to live there. On the other hand, although long residence is an important factor in assessing domicile, it may not in itself prove that a domicile of choice has been acquired.

The courts have held that a domicile of choice cannot be acquired by illegal residence.

The fact that a person is in the UK on a time restriction does not necessarily mean that a domicile of choice here cannot be acquired. However, you must take it into account when considering whether the person had formed a genuine intention of remaining here permanently. Unless it can be shown that the person had reason to expect - as well as just hope - that he or she would remain in the UK, it would be difficult to establish that the person had acquired a change of domicile.

To show a change of domicile it is essential to establish an intention of remaining in the place permanently or for an unlimited time. Every event in a person's life may be relevant. You must therefore take into account of all the evidence which can reasonably be gathered. Declarations of intention to remain permanently or to retire in a place are important, but you must bear in mind the context in which they are made and whether they are consistent with the person's actions.

Sometimes it is useful to ask the person to complete a domicile questionnaire to obtain this information.

It is important to remember that when you are assessing a person's domicile at a particular point in time (such as at the time of a polygamous marriage), it is the person's intentions at that point in time which are relevant.

These are factors that you may consider in assessing a person's intentions at a particular time. However these are only examples and you must take any other relevant factors into account.

Nationality

Nationality and domicile are 2 different concepts. A person can change their nationality without it affecting their domicile, or could acquire a change of domicile whilst retaining their original nationality. The fact that a person has acquired a new nationality can be a relevant factor in showing a change of domicile, but is not conclusive, depending upon the reasons for the change. If a person gives up their former nationality it may suggest a change of domicile.

Statutory declarations

Declarations made by applicants for naturalisation that they intend to retire or reside permanently in the United Kingdom should be considered when assessing domicile.

Length of residence

Length of residence is not conclusive by itself, but it can indicate a person's intentions. Where a person makes few or no visits to their country of origin, it might point towards them having acquired a domicile of choice. On the other hand, frequent long visits to their country of origin might suggest that a person has retained their domicile of origin.

Property

The possession of a house or land is relevant and you must take into account when, how and why it was acquired. The purchase of burial grounds is a good indication of intention.

Employment

You must take into account the nature and length of the person's employment in this country.

Exercise of political rights

Whether the person is registered as an elector, where and for how long is a factor that might indicate that a person intends to make a country their permanent home.

Residence of family

If a person has lived in the UK for many years, but has maintained a family in their country of origin, it will be more difficult to establish that the person has abandoned their domicile of origin there. You must take into account whether there are plans to bring over other family members. You must also consider whether other relatives live in the UK.

Children's education

If the person had or intends to have their children educated in the UK, it may indicate that they have acquired a domicile of choice here. But if the person has lived in the UK for many years and still sends their children to their country of origin to be educated, this might imply that they have not abandoned their domicile of origin.

The standard and burden of proof

It is up to the person who is claiming that a change of domicile has taken place to prove that change. For example, if you think that a polygamous marriage that took place abroad is invalid in UK law because one of the couple had acquired a domicile of choice here at the time, you must have sufficient evidence to show that is the case.

The degree of proof required to establish that a domicile of origin has been displaced in favour of a domicile of choice is high. The courts have said that "unless you are

able to show with perfect clearness and satisfaction, that a new domicile has been acquired, the domicile of origin continues" (Bell -v- Kennedy LR 1 Se & W App 310).

This can mean that, whilst a range of evidence will normally be needed to show that a change of domicile has occurred, a single piece of evidence may be enough to show that there has been no change of domicile (such as a statement by the person concerned that they had no intention of making the place in question their permanent home).

The standard of proof required in cases where it is claimed that one domicile of choice has been replaced by another is the balance of probabilities. It is still the responsibility of the person asserting that the domicile has changed to prove it.

Enquiries to establish domicile

You do not need to make further enquiries, unless you have doubts about the previously accepted position, if the validity of a marriage or divorce, or a child's relationship with their father has been previously decided or accepted by:

- an entry clearance officer
- immigration officer
- Home Office or overseas territories official
- any tribunal or court in the United Kingdom or the overseas territories

If you do not have enough evidence to make a decision about a person's domicile, you must make further enquiries.

A domicile questionnaire can be used as part of an interview, or can be sent to the applicant for them to complete, with approval of a senior caseworker.

The domicile questionnaire sets out questions to be asked in cases of polygamous or potentially polygamous marriage. It can be modified to ask about the validity of a divorce or a child's relationship with their father. It is important that the person is aware that the questions are being asked to establish their domicile at a particular date.

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