



Registration of children/young persons as British citizens

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Many children born in the UK or living here from an early age do not have British citizenship or any leave (permission) to remain in the UK. However, many are entitled to British citizenship, and others, while not entitled, may be granted citizenship at the discretion of the Home Office.

Some of these children neither know they do not have permission to be in the UK nor that they may apply for citizenship (or for permission to stay in the UK). Similarly, parents, foster parents and corporate parents (social services) often do not know these things; and in some cases appear to prefer not to know.

Most relevant legal provisions:

Citizenship

1. A child born in UK to a British or settled parent is a British citizen (acquisition)¹
2. A child born in the UK to a parent who becomes British or settled may be registered as British before turning 18 (registration by entitlement)²
3. A child/adult born in UK who completes his/her first 10 years in the UK (with no more than 90 days absence³) may be registered as British at any time (registration by entitlement)⁴
4. A child may be registered as British at discretion of the Home Office before turning 18 (registration at discretion)⁵
5. A person 18 or over can apply to naturalise at the discretion of the Home Office. However, there are a number of mandatory requirements, such as having ILR, 5 years lawful residence etc.

There are many other provisions under the British Nationality Act 1981 providing for citizenship – including specific provisions relating to children of HM Armed Forces, illegitimate children born before 1 July 2006 and children born to parents who are British by descent.

Immigration

Indefinite leave to remain (ILR) may be granted under the immigration rules to a person who has completed 10 years of limited leave to remain in the UK (leave to remain is

¹ Section 1 (1), British Nationality Act 1981

² *ibid* section 1(3)

³ An absence of more than 90 days may be considered in special circumstances, section 1(7)

⁴ *Ibid* section 1(4)

⁵ *Ibid* section 3 (1)

usually granted in blocks of 30 months). ILR may also be granted outside the immigration rules at the discretion of the Home Office.

Since the withdrawal of 7-year children ILR concession⁶, citizenship has become increasingly important. Under this previous concession, a child living in the UK for 7 uninterrupted years (with or without leave) would have been granted indefinite leave to remain.⁷

Advantages of citizenship over Indefinite Leave to Remain (ILR)⁸:

- Citizenship is not lost by 2 years absence from UK
- Citizens are at less risk of deprivation and deportation from UK
- Citizenship provides access to a British passport
- Certain public offices require citizenship; citizenship provides right to vote and to stand for parliament
- Citizenship provide EU free movement rights
- Citizenship may provide a greater sense of belonging and identity; and may aid integration

***** Due to immigration policy changes many children/young adults are not applying or granted ILR**

Among key problems currently are:

1. Lack of awareness – children, parents, social services, others working with children
2. Neglect, ignore, delay, assumption, not treated as a priority by carers
3. Absence of legal aid (evidence acquisition may be complex and costly, and law is not straightforward and accessible)
4. Poor advice, assistance and representation
5. Very few grant-funded organisations are advising children/young adults on citizenship. This is a bigger problem outside London
6. Affordability of Home Office application registration fee⁹ of **£749** for a child and £923 for an adult and £1,050 for an adult's naturalisation application may be a barrier for those children/carers who are destitute or on low income¹⁰. The actual cost of a child's registration application to the Home Office is **£223**¹¹ (with a profit of £526). The registration fee is not reimbursed if an application is refused
7. Poor decision-making on part of the Home Office in discretion applications. The Home Office's Chapter 9 policy guidance¹² on discretion fails to properly consider or

⁶ 9 December 2008, Withdrawal of 7-year children Policy concession

<http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm081209/wmstext/81209m0002.htm>

⁷ DP69/99 Policy Concession to grant ILR to families with children who have completed 7 years of residence rather than being removed from the UK: "...the policy [7- year children concession] contemplates that the requirements of a firm system of immigration control do not extend to the need to uproot children without strong reason

⁸ see importance of citizenship: <https://prcbc.wordpress.com/what-we-do/>

⁹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/448606/Master_Fees_Leaflet_2015_07_21.pdf

¹⁰ Sections 68-70 of the Immigration Act 2014 give power to the SSHD to charge fees for applications. The Immigration and Nationality (Fees) Regulations 2015 (SI/788/2015) stipulates amounts and any fee waiver and exception

¹¹ See page 10 of explanatory memorandum to the immigration and nationality fees regulations 2015

http://www.legislation.gov.uk/uksi/2015/768/pdfs/uksiem_20150768_en.pdf

¹² Chapter 9, Nationality Instructions, registration of minors at discretion

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/420396/chapter_9_changes_re_s65_150402.pdf

- apply best interests and/or right to private and family life¹³. Refusal letters are standard paragraphs on one side of a page
8. No legal aid at internal review stage¹⁴ and an £80 review fee¹⁵ is required
 9. At present time there is legal aid for judicial review proceedings. However, high risk on legal aid not being paid if permission to judicial review is not granted by the high court
 10. A 'good character' requirement¹⁶ applicable to children from aged 10 (and an adult policy guidance on good character applied to children's registration applications¹⁷)
 11. Section 4 of the Rehabilitation Act 1974 does not apply to immigration and nationality decisions and proceedings¹⁸. This includes children's registration applications
 12. Chapter 9 would normally require a child applying to register at the discretion of the Secretary of State to have ILR. In naturalisation application for adults, ILR is a mandatory requirement¹⁹

¹³ See legal research report: Systemic obstacles on the registration of children as British citizens:

<https://prcbc.files.wordpress.com/2015/08/systemic-obstacles-on-the-registration-of-children-as-british-citizens.pdf>

¹⁴ UKVI NR form (non-mandatory): <https://www.gov.uk/government/publications/application-for-review-when-british-citizenship-is-refused-form-nr>

¹⁵ Fee is prescribed under the fees regulations 2015

¹⁶ Section 41A (1) and (5) of the British Nationality Act 1981, in force from 13/1/10. Prior to this, there was a Home Office policy introduced in Dec 2006.

¹⁷ Chapter 18, Annex D of the Nationality Instructions:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/385792/Chapter_18_Annex_D_v02_141210_web_version.pdf

¹⁸ Section 56A of the UK Borders Act 2007 in force (added by s140 of LASPO). In force from 1 Oct 2012 but not introduced until 12/12/12

¹⁹ section 6 of BNA 1981