

Chapter 2: British Citizenship and the Right of Abode

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Aim of this Chapter

This chapter will enable you to achieve the following learning outcome from the ILEX syllabus:

- 5 Understand modern British nationality law

2.1 Introduction

This chapter describes:

- the different categories of British citizens;
- the legislation that provides for the acquisition of citizenship;
- the categories of people who may have a right to citizenship and under what circumstances – the concept of the “right of abode”;
- how British citizenship can be acquired by those who do not have an absolute right;
- particular exceptions for citizens of certain countries;
- those who have a right of abode without being British citizens;
- loss of British citizenship and its effects.

One of the key elements of British immigration law is the distinction between those who have the right of abode in the UK and those who do not. Those who do not have the right of abode can enter and remain in the UK only if they are given permission to do so, that is, if they are given **leave** to enter or remain. This means that they must qualify under the immigration rules. By contrast, those who have the right of abode have a statutory right to be admitted to and remain in the UK, subject only to being able to prove that they have the right of abode.

The general rule is that **all British citizens have a right of abode**. There are certain Commonwealth citizens who also have a **right of abode** but who are **not** British citizens. The latter are a group of people whose numbers are dwindling as the historical advantages bestowed on Commonwealth citizens are being reduced through changes in legislation.

As all British citizens have the right of abode, this chapter will look largely at how to decide if someone is a British citizen. The situation is still far from straightforward; the main reason for this is that there are different categories of British nationality and not everyone in these categories is necessarily a **British citizen with the right of abode**. There are also a number of different ways in which a person can acquire British citizenship, by **birth, descent, registration** or **naturalisation**.

The position is further complicated by the terminology used. The term **British citizen** has existed only since 1 January 1983, when it was introduced by the **British Nationality Act 1981 (BNA 1981)**. Previously, the right of abode depended on whether one had patrial status under **IA 1971**, which in turn depended on **citizen of the UK and colonies (CUKC)** status under the **British Nationality Act 1948 (BNA 1948)**. Thus, an understanding of this area of the law requires some knowledge of the historical development of nationality law.

Given the complexity of British nationality law, it would be impossible to provide an exhaustive analysis of the topic in this manual. It is sufficient to be able to identify the circumstances in which a person is likely to have a claim to British citizenship and, therefore, have the right of abode.

2.2 The position before the British Nationality Act 1981

The two defining pieces of legislation relating to nationality law prior to **BNA 1981** were **BNA 1948** and **IA 1971**. The changes brought in by the legislation have shifted the ability to acquire British citizenship from acquisition otherwise than by descent – by birth only (in either the UK or any colony or dependency) – to an ability to acquire citizenship largely by descent (see **2.5.1** and **2.5.3**). The transition is by no means complete and the legislation now in force enables people to acquire British citizenship by a variety of means.

Before **BNA 1948** citizenship was dictated by place of birth. Anyone born in the UK or a colony was a British subject, owing allegiance to the Crown. **BNA 1948** introduced a new category, CUKC, which applied to those born or naturalised in the UK or colonies or to those whose father had been born or naturalised in the UK or colonies. This was the start of the concept of **patriality** – where citizenship is acquired because of one's father's citizenship – although the term was not then used.

IA 1971 properly introduced patriality as the defining factor for the acquisition of citizenship. All patrials had the right of abode and a patrial was defined in **s2 IA 1971**.

2.2.1 Becoming a CUKC on commencement of the British Nationality Act 1948

On the coming into force of **BNA 1948** on **1 January 1949**, British subjects who were born or naturalised (see **2.2.2**) in the UK or colonies, or whose father had been, automatically became CUKCs. In addition, people living in independent Commonwealth countries were also British subjects, and only Canada, New Zealand and Ceylon (now Sri Lanka) had enacted citizenship laws on the coming into force of **BNA 1948**. British subjects living in independent Commonwealth countries specified in **BNA 1948** whose citizenship laws had yet to be enacted were defined as potential citizens of the country. Potential citizens who did not become citizens of the independent Commonwealth

country on the enactment of its citizenship laws became **British subjects without citizenship**. A woman married to a man who became a CUKC, or who would have become so but for his death, automatically acquired CUKC status.

2.2.2 Acquiring CUKC status after commencement of the British Nationality Act 1948

BNA 1948 also made provision for the acquisition of CUKC status.

(1) By birth

A child born in the UK or colonies after 1 January 1949 became a CUKC unless the child's father was a foreign diplomat or the birth was in a territory occupied by enemy aliens.

(2) By adoption

There was no provision in **BNA 1948** for citizenship by adoption, but the **Adoption Acts 1949** and **1958** provided that a child adopted in the UK by a CUKC acquired CUKC status.

(3) By descent

A child born outside the UK or colonies to a CUKC father acquired CUKC status. This is known as **citizenship by descent**. Only fathers could pass on their CUKC status. This provision applied equally to children born before 1 January 1949, but for children born after this date the right to become a CUKC by descent was limited where the child's father had himself acquired his citizenship by descent. In such a case the child acquired CUKC status only if:

- (a) the child was born in a British Protectorate or similar territory or a foreign country where the Monarch still had jurisdiction over British subjects;
- (b) the birth was in a foreign country and was registered, normally within one year, at a British consulate;
- (c) the father was in Crown service at the time of the birth; or
- (d) the birth was in an independent Commonwealth country and the child did not become a citizen of that country at birth.

An illegitimate child could not acquire CUKC status despite the father being a CUKC; however, the subsequent marriage of the child's parents would legitimate the birth and the child could then acquire his father's CUKC status.

(4) By registration

BNA 1948 also made provision for those who were not born CUKCs to acquire this citizenship through registration. In some cases there was an absolute entitlement to registration and in other cases it was within the Secretary of State's discretion. Women, whether Commonwealth or alien, who married a CUKC had an absolute right to register as CUKCs.

Commonwealth citizens and Irish citizens also had an absolute right to register as CUKCs on the basis of 12 months' lawful residence in the UK or a colony. The **Commonwealth Immigrants Act 1962** lengthened this period of residence

to five years. **IA 1971** made registration discretionary in most cases. There was a discretion under **BNA 1948** to register other categories such as minor children as CUKCs.

(5) **By naturalisation**

BNA 1948 made aliens eligible for naturalisation as CUKCs on the basis of residence in the UK. The granting of naturalisation was at the discretion of the Home Office and would not be granted unless the applicant was of good character, had sufficient knowledge of the English language, had been resident in the UK 12 months before the naturalisation application, and resident in the UK and colonies for four years of the preceding seven years.

2.2.3 Immigration Act 1971 – patrials and the right of abode

IA 1971 made further changes that meant that not all CUKCs had a right of abode. Its provisions identified those CUKCs who did have a right of abode – providing that only those who were **patrial** (or the wives of patrials) had a right of abode in the UK. Those who were patrials and therefore acquired a right of abode were defined in **s2 IA 1971** as:

- a CUKC by virtue of birth, registration, adoption, naturalisation or registration in the UK (**s2(1)(a)**); or
- a CUKC born to or legally adopted by a parent who was himself a CUKC **and** the parent was born, adopted, naturalised or registered in the UK or the parent had been born to or adopted by a parent who at the time of the birth or adoption was a CUKC (**s2(1)(b)**); or
- a CUKC who had been ordinarily resident in the UK as a CUKC for five years or more at the time of the commencement (**s2(1)(c)**); or
- was a Commonwealth citizen born to or adopted by a parent who, at the time of the birth or adoption, was a CUKC by virtue of his own birth in the UK (**s2(1)(d)**); or
- a woman who is a Commonwealth citizen who marries or has married a CUKC or a person who, but for his death, would have been a CUKC on commencement (**s2(2)**).

There are a number of points to note about these provisions. The first is that being born in the UK for the purposes of being a patrial CUKC includes the Channel Islands and the Isle of Man or a ship registered in the UK. The second is that, at the time, the term “parent” referred only to the father of a legitimate child or the mother of an illegitimate child. This situation has now been remedied by **s9 NIAA 2002**.

The varying provisions in the legislation has led to a situation where a person might be a **British citizen by descent** (because of the citizenship of a parent) or a **British citizen otherwise than by descent** (because the person was born in the UK or colonies, or naturalised as a British citizen).



(6) Which CUKCs had a right of abode in the UK after commencement of **IA 1971**?

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